

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF NEW YORK

KLEIN, . Case No. 10-01228  
. Adversary No. 10-44815  
v .  
. New York, New York  
CHRISTINE PERSAUD. . Monday, November 14, 2011  
. 9:26 a.m.

BEFORE THE HONORABLE JUDGE ELIZABETH STONG  
UNITED STATES BANKRUPTCY JUDGE

[1] ADJOURNED PRE-TRIAL CONFERENCE RE: COMPLAINT  
ADJOURNED FROM: 10/19/10 11/4/10 12/14/10 1/5/11 2/2/11 3/10/11  
4/7/11 5/20/11 6/17/11 8/16/11 9/27/11 10/28/11 11/8/11

[187,228] ADJOURNED HEARING (RE:RELATED DOCUMENT(S) [182]  
APPLICATION TO EMPLOY TROUTMAN SANDERS ADJOURNED FROM 9/27/11  
10/28/11 11/8/11

[204] ADJOURNED HEARING ON APPLICATION FOR ORDER TO SHOW CAUSE  
(RE: RELATED DOCUMENT(S) [195] MOTION FOR 2004 EXAMINATION OF  
MELQUISEDEC ESCOBAR ADJOURNED FROM 9/8/11 9/13/11 9/20/11  
9/22/11 10/28/11 11/8/11

[293] HEARING ON THE RECONSIDERATION OF THE ORDER TO SHOW CAUSE  
APPLICATION (RE: RELATED DOCUMENT(S) [195] MOTION FOR 2004  
EXAMINATION OF MELQUISEDEC ESCOBAR

[214] ADJOURNED HEARING ON APPLICATION FOR ORDER TO SHOW CAUSE  
(RE: RELATED DOCUMENTS(S) [196] MOTION FOR 2004 EXAMINATION OF  
PHILIP GOTTEHRER ADJOURNED FROM 9/8/11 9/13/11 9/22/11 10/28/11  
11/8/11

[295] HEARING ON THE RECONSIDERATION OF THE ORDER TO SHOW CAUSE  
APPLICATION (RE: RELATED DOCUMENT(S) [272] ORDER TO SCHEDULE  
HEARING (GENERIC), [196] MOTION FOR 2004 EXAMINATION OF PHILIP  
GOTTEHRER

[203] ADJOURNED HEARING ON APPLICATION FOR ORDER TO SHOW CAUSE  
(RE: RELATED DOCUMENTS(S) [197] MOTION FOR 2004 EXAMINATION OF  
JOEL KLEIN ADJOURNED FROM 9/8/11 9/13/11 9/20/11 10/28/11 11/8/11

1 [292] HEARING ON THE RECONSIDERATIO OF THE ORDER TO SHOW CAUSE  
2 RE: RELATED DOCUMENT(S) [197] MOTION FOR 2004 EXAMINAITON OF  
JOEL KLEIN

3 [201] ADJOURNED HEARING ON APPLICATION FOR ORDER TO SHOW CAUSE  
4 (RE: RELATED DOCUMENT(S) [198] MOTION FOR 2004 EXAMINATION OF  
CARING HOME AGENCY ADJOURNED FROM 9/8/11 9/13/11 9/20/11 9/22/11  
10/28/11 11/8/11

5 [296] HEARING ON THE RECONSIDERATION OF TE ORDER TO SHOW CAUSE  
6 APPLICATION (RE: RELATED DOCUMENT(S) [198] MOTION FOR 2004  
EXAMINATION OF CARING HOME CARE AGENCY

7 P202] ADJOURNED HEARING ON APPLICATION FOR ORDER TO SHOW CAUSE  
8 (RE: RELATED DOCUMENT(S) [199] MOTION FOR 2004 EXAMINATION OF  
ABRAHAM KLEIN

9 [294] HEARING ON THE ORDER TO SHOW CAUSE APPLICATION AND HEARING  
10 ON THE RECONSIDERATION OF THE ORDER TO SHOW CAUSE  
11 APPLICATION(RE: RELATED DOCUMENT(S) [199] MORTION FOR 2004  
EXAMINATION OF ABRAHAM KLEIN

12 [179] ADJOURNED MOTION FOR VIOLATION OF AUTOMATIC STAY AND TO  
13 VOID CERTAIN DECISIONS OF THE STATE SUPREME COURT ISSUED IN  
VIOLATION ADJOURNED FROM 9/27/11 10/28/11 11/8/11

14 [1] ADJOURNED PRE-TRIAL CONFERENCE RE: COMPLAINT ADJOURNED FROM  
15 10/28/11 11/8/11

16 ADJOURNED MEDIATION CONFERENCE  
ADJOURNED FROM 6/28/11 7/5/11 7/7/11 7/27/11 9/7/11 9/28/11  
10/25/11

17  
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25

1 BROOKLYN, NEW YORK, MONDAY, NOVEMBER 14, 2011, 9:26 A.M.

2 THE COURT: Please be seated.

3 MR. CAMPO: Good morning.

4 MR. STREMB: Good morning.

5 MR. PEREIRA: Good morning.

6 THE COURT: I apologize for my voice. I'm working  
7 on it. Let's get your appearances for the record, please.

8 MR. STREMB: Your Honor, Lee Stremba with Troutman  
9 Sanders for the Trustee and the firm.

10 MR. CAMPO: John Campo with Troutman Sanders, Your  
11 Honor, for the Trustee and the firm.

12 MR. PEREIRA: John S. Pereira, the Chapter 7  
13 Trustee.

14 MR. ZILBERBERG: Mendel Zilberberg for creditor  
15 Klein with, of Counsel, Joel Lewittes, and of Counsel, Pery  
16 Krinsky, as well as Sarah Moskowitz. Thank you, Your Honor.

17 THE COURT: All right.

18 MR. KRINSKY: Good morning, Your Honor.

19 THE COURT: Thank you. And I apologize for the  
20 later-than-expected start. Unanticipated matters that had to  
21 be taken care of first thing this morning.

22 So I believe we are here to resume the testimony of  
23 Mr. Klein, is that right, first and foremost?

24 MR. KRINSKY: Yes, Your Honor.

25 THE COURT: Okay. Mr. Klein, you can take the

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1 stand. All right. You may be seated.

2 MR. KRINSKY: May I inquire, Your Honor?

3 THE COURT: Yes, you may. I remind you that you  
4 have -- your affirmation continues in effect.

5 ABRAHAM KLEIN; Previously sworn.

6 DIRECT EXAMINATION

7 BY MR. KRINSKY:

8 Q. Good morning, Mr. Klein.

9 A. Good morning.

10 Q. Mr. Klein, did there come a time in the summer of  
11 2008 that you contemplated investing in China?

12 A. Yes. In July of 2008, we were thinking of possibly  
13 investing in a real estate development in China.

14 Q. And did there come a point in time that you sought  
15 to retain, and did retain, counsel in connection with that  
16 project?

17 A. Yeah, right around the same time in July of 2008,  
18 we reached out to Troutman Sanders for potential  
19 representation in the matter of the real estate investment in  
20 China.

21 Q. Did there come a point in time that you actually  
22 did retain the Troutman Sanders firm in connection with the  
23 China project?

24 MR. STREMB: Your Honor, leading question.

25 THE COURT: Did there come a time -- overruled. You

1 may answer.

2 A. In July -- end of July and beginning of August, we  
3 retained Troutman Sanders in connection with the project in  
4 China.

5 BY MR. KRINSKY: (Cont'g.)

6 Q. In connection with that retention, what, if any,  
7 services -- legal services did the Troutman firm agree to  
8 provide to you in connection with the China project?

9 A. They agreed to provide legal due-diligence, project  
10 due-diligence, negotiations -- contract negotiations,  
11 finance-related services, and -- and as well as possibly also  
12 raising capital, the general -- the general categories.

13 Q. Okay. And specifically, with respect to those  
14 services, who, if anyone, from the Troutman Sanders firm  
15 provided those services to you in connection with the -- in  
16 connection with the China project?

17 A. Mr. Epstein. We discussed those issues on July  
18 30th on the conference call. We also basically discussed  
19 that later on, and it was Mr. Epstein, I guess, Aurora  
20 Cassirer.

21 Q. Beginning in the summer of 2008 until December of  
22 2008, did you have discussions with Mr. Epstein or other  
23 members of the Troutman Sanders firm regarding the China  
24 project?

25 A. Yeah. We had discussions with Mr. Epstein and Mr.

1 Wang (phonetic spelling) in reference to the China project,  
2 and we discussed the different categories that we originally  
3 discussed.

4 Q. When you refer to Mr. Wang, who is -- just for all  
5 of our benefit, who is Mr. Wang?

6 A. Mr. Wang is an attorney in the Troutman Sanders  
7 firm in Shanghai, and he seemed to be doing a lot of the work  
8 on the project.

9 Q. After you retained -- you retained the Troutman  
10 Sanders firm, what were the subject matters that were  
11 discussed with the Troutman Sanders firm regarding the China  
12 project?

13 A. We discussed the legal due-diligence, the project  
14 due-diligence, we discussed contract negotiations, we  
15 discussed financing-related matters. That was the general  
16 categories.

17 Q. Okay. First, I'd like to talk to you briefly with  
18 respect to the issue of legal due diligence, what were the  
19 issues discussed with the Troutman Sanders firm regarding the  
20 China project?

21 A. China, I guess, being somewhat different than our  
22 general understanding, we needed to make sure that whatever  
23 was being presented to us from the developer's side on the  
24 project would actually fit within the China legal system. We  
25 needed to also make sure that monies invested, specifically

1 because of being foreign currencies, that it would be able to  
2 be legally invested into the country and eventually  
3 repatriated into the original currencies. And we had to make  
4 sure that it would fit into the legal system.

5 Q. You mentioned a moment ago also the issue of  
6 corporate structuring. Generally speaking, what were the  
7 issues discussed with respect to corporate structuring with  
8 the Troutman Sanders firm in connection with the China  
9 project?

10 A. Very similar. In order to make the investment, we  
11 would have to set up a corporate structure that would fit  
12 within the legal system that would allow for foreign  
13 currencies specifically to be injected into the company and  
14 later on repatriated into its original currencies.

15 Q. You also mentioned a moment ago contract  
16 negotiations. What were the discussions that you had  
17 generally about contract negotiations with the Troutman  
18 Sanders firm in connection with the China project?

19 A. One example we were working on the letter -- a  
20 letter of understanding with the developer, and that was a  
21 big part of the negotiations of making sure that the whole  
22 understanding is right.

23 Q. And lastly, you mentioned the issue of injecting  
24 currency. What were, if any, the discussions that you had  
25 with the Troutman Sanders firm about -- with respect to



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1 financing of the China project?

2           A.    There's a -- I guess in the -- in the China system,  
3 somewhat, there is more than just making a company and  
4 investing money through the company into the project. There  
5 are many rules of how to fund the company or of funding that  
6 needs to be done within a certain amount of time not even  
7 related to the actual funding of the project. And because of  
8 that, we needed to make sure that the funding is there in  
9 order to make the company work as well as structure the  
10 company according to whatever funding was actually available  
11 and what we still would need to raise.

12           Q.    Did there come a point in time that you discussed  
13 with the Troutman Sanders firm a company called Caring?

14           A.    Yes. It was in relation to the different vehicles  
15 that we discussed that we were thinking of -- we would be  
16 able to invest funds through those different vehicles.

17           Q.    By the way, when I say discussions with the  
18 Troutman Sanders firm specifically in connection with Caring  
19 and those discussions, who did you have those discussions  
20 with about Caring?

21           A.    With Mr. Epstein and Mr. Wang.

22           Q.    And a moment ago, you mentioned different  
23 vehicles -- financial vehicles. What were, if any, the  
24 different financial vehicles that were discussed as  
25 possibilities for investing in China?

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1           A.   Flexocraft, which is one of the companies I'm  
2   affiliated with, was a potential vehicle as a public company  
3   and being able to possibly raise funds, venture capital, and  
4   that we discussed with Troutman Sanders was a potential  
5   vehicle as well as my personal finances or my personal  
6   monies, which a big portion of that was in Caring.

7           MR. KRINSKY: In discussing your ownership interest  
8   in Caring, without telling us specifically what was said --.

9           MR. STREMB: Objection, Your Honor. There's no  
10   such testimony.

11           THE COURT: Well, let's have a complete question.  
12   It'll help me assess an objection.

13   BY MR. KRINSKY: (Cont'g.)

14           Q.   You mentioned a moment ago your ownership interest  
15   in Caring. Without telling us specifically what you said,  
16   what categories of information did you provide to the  
17   Troutman firm regarding that ownership interest?

18           THE COURT: You may answer.

19           A.   I discussed with them my investment in Caring. I  
20   -- I discussed with them, which was -- at that time, I  
21   accrued profits in Caring, my ownership rights, and I  
22   discussed with them different -- a way that I would have to  
23   get the money out from Caring in order to invest in the China  
24   project.

25   BY MR. KRINSKY: (Cont'g.)

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1 Q. Mr. Klein, when you say different ways to get your  
2 money out of Caring to invest in the China project, what  
3 specifically do you mean?

4 A. I was working on a factoring agreement in order to  
5 leverage my ownership rights and equity in Caring, therefore  
6 being able to invest in China.

7 MR. KRINSKY: Mr. Klein, putting aside for a moment  
8 the factoring agreement, when, if ever, did you have  
9 discussions with the Troutman firm regarding simply  
10 liquidating your interest and investing in the China project  
11 yourself?

12 MR. STREMB: Your Honor, objection. Where was that  
13 from?

14 THE COURT: I have to say that question seems to me  
15 to go beyond the boundaries of what's been the witness'  
16 testimony. I'm going to encourage you to ask questions in  
17 the nature of questions seeking direct testimony and not to  
18 provide information not previously set forth in the witness'  
19 testimony in your answers. Can you rephrase that question,  
20 please?

21 BY MR. KRINSKY: (Cont'g.)

22 Q. Did there come a point in time where you had  
23 discussions with Troutman Sanders regarding how to invest  
24 monies in the China project?

25 A. I would discuss that in the beginning in July. And

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1 in August, we discussed it -- of how we would invest monies  
2 in -- in -- in Caring and where -- I'm sorry -- in China and  
3 where the money would be coming from.

4 MR. KRINSKY: And did you discuss with Troutman  
5 Sanders --?

6 THE COURT: Excuse me for one second. I need to  
7 confer with my deputy. May we go briefly off the record?

8 (Off the record)

9 THE COURT: Okay. Mr. Krinsky, for the sake of a  
10 smooth record, I'm going to ask you to restate your pending  
11 question -- or state again, I should say, your pending  
12 question.

13 BY MR. KRINSKY: (Cont'g.)

14 Q. Did there come a point in time -- withdrawn.

15 During the period of the summer of '08 to December  
16 of '08, did you have occasion to discuss with the Troutman  
17 Sanders firm the possible financial investment vehicles for  
18 the China project?

19 A. Yes, I discussed it with them. In -- in July, I  
20 discussed it with them. You know, basically it was part of  
21 the discussion every time we spoke, November, December, every  
22 time we spoke about this.

23 Q. Just go back for a moment. And specifically what  
24 was the financial investment vehicle that was discussed  
25 during these conversations with Troutman Sanders?

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1           A.     There were a couple of financial investment  
2 vehicles. And one -- one of them was my personal monies that  
3 I had in Caring, which I needed to get out from Caring in  
4 order to invest in China.

5           Q.     When you say get out of Caring, what do you mean?

6           A.     It wasn't -- wasn't that simple. We -- I needed  
7 to find a creative way to do that, and so I came up with this  
8 factoring -- idea of a factoring agreement in order to  
9 leverage my equity in the company.

10          Q.     Again, without telling us specifically what was  
11 said, with respect to the factoring agreement, what, if any,  
12 discussions did you have with the Troutman Sanders firm  
13 regarding your financial interests in Caring?

14          A.     I discussed with them my ownership rights. I  
15 discussed with them the monies that I invested in the  
16 company. I discussed with them my profits at that time and  
17 what it would -- what would be the -- the potential profit at  
18 the time that we'd -- we would get to the point of closing  
19 the China deal. I discussed with them issues that I had at  
20 that moment whereby I couldn't just simply write a check from  
21 the company in order to invest in the China project.

22          Q.     Mr. Klein, with respect to this factoring  
23 agreement, did the Troutman Sanders firm have any direct  
24 involvement in the drafting or negotiating of this factoring  
25 agreement you refer to?

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1           **A.       No.**

2           Q.       Well, if they didn't have any direct involvement  
3       in drafting or the negotiating of it, what was the nature,  
4       then, of the discussions with the Troutman Sanders firm about  
5       the factoring agreement?

6           **A.       They needed to know where monies were coming from.**  
7       **They needed to know the timeframe of any and all monies in**  
8       **order to be able to, number one, I guess, structure the --**  
9       **the -- do the corporate structure in order to work along with**  
10      **the financial abilities and as well as they needed to know**  
11      **where it was coming from because investment -- investing**  
12      **foreign funds as well as repatriation of funds was an issue**  
13      **in a China company structure.**

14      Q.       Okay. I'd like to focus a little bit more on that for  
15      a moment. If you would please turn to the exhibit book to  
16      tab one two four in the Klein exhibit book, one two four.  
17      Mr. Klein, I'd like you to briefly look down at that  
18      document, briefly look through it, and when you're done  
19      flipping through it, please look up. When you're done  
20      flipping through, if you would just look up just so we know  
21      you're ready.

22           **A.       The -- through the first part or all of them?**

23      Q.       When you're done flipping through the document, if  
24      you would please look up. Mr. Klein, do you recognize that  
25      document?

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1           **A.     Yes.**

2           Q.     How do you recognize that document?

3           **A.     That's from -- one of the e-mails from -- that was**  
4 **written to me.**

5           Q.     Okay. And what do you recognize that document to  
6 be?

7           **A.     It's a letter from Mr. -- Mr. Wang on November 24.**

8           Q.     Okay. And Mr. Wang is, just so the record's  
9 clear?

10          **A.     From Troutman Sanders.**

11                 MR. KRINSKY: Your Honor, I offer into evidence what  
12 was previously marked as Klein Exhibit One Twenty-four as  
13 identification as Klein Exhibit One Twenty-four.

14                 MR. STREMB: No objection, Your Honor.

15                 THE COURT: Without objection, it will be received  
16 in evidence.

17                 (Klein Exhibit One Twenty-four is admitted in  
18 evidence.)

19                 THE COURT: The copy that I have is a two page e-  
20 mail -- excuse me -- a three page e-mail followed by the  
21 November 28th, 2008, seven page letter, is that correct?

22                 MR. KRINSKY: It is, Your Honor.

23                 THE COURT: Thank you. Please proceed.

24                 BY MR. KRINSKY: (Cont'g.)

25           Q.     Mr. Klein, a moment ago, you had mentioned that

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1 you had -- that you had been discussing with the Troutman  
2 Sanders firm issues of investing in China. Please take us  
3 through, if you would, this e-mail very briefly noting to the  
4 Court where, if at all, those discussions are reflected in  
5 this -- in this particular e-mail.

6 **A. Something very specific? That's all -- it's all**  
7 **about investing in China.**

8 Q. Well, specifically can you cite some examples for  
9 us specifically where you're discussing G.R.V. and the issues  
10 of investing in China?

11 **A. It's about paragraph three, where I'm -- where**  
12 **we're discussing G.R.V. and the investment in China and how**  
13 **it works with foreign investments.**

14 Q. So for example, referring to the paragraph that  
15 begins T-S, about halfway down on the page, do you see that?

16 **A. Yes.**

17 Q. Okay. Specifically referring your line -- your  
18 attention to line four -- this document's already in evidence  
19 -- specifically where it begins to discuss, quote, "The China  
20 law does not permit a guarantee for the fixed return under a  
21 Sino-foreign investment corporation." Did I read that  
22 correctly?

23 **A. Correct.**

24 THE COURT: Could you say again what paragraph  
25 you're reading from?



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1 MR. KRINSKY: Sure. This is under the paragraph  
2 that's labeled two. It is the paragraph that begins T-S.

3 THE COURT: Yes, okay.

4 MR. KRINSKY: Okay.

5 BY MR. KRINSKY: (Cont'g.)

6 Q. Specifically referring to the fourth line down,  
7 approximately four -- four words from the left of the page,  
8 the China law.

9 A. Yes, I see.

10 Q. Okay. In your discussions with the Troutman  
11 Sanders firm, what, if anything, did you discuss with respect  
12 to difficulties in China and investments?

13 A. There's different rules and regulations in the  
14 China law which we were not very familiar with, and we were  
15 looking for them -- for Troutman to advise us. And what we  
16 discussed in general were that where the funds would be  
17 coming from, through which vehicles we might be bringing the  
18 funds to this project, and how that would be able to be  
19 injected as foreign currencies into the -- into this China  
20 project as well as being able to get it back out in the same  
21 currencies.

22 Q. I'm going to refer your attention to the last  
23 sentence of that same paragraph that begins after "Obtaining  
24 more information." Do you see that? Same paragraph that  
25 begins T-S, colon, very last sentence, beginning after

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1 "Obtaining more information." Do you see where I am? Okay.  
2 I'd like you to read that out loud for us.

3 A. (Reading) "After obtaining more information about  
4 this project and Mr. Zhang's company, we will advise you  
5 whether there are any possibilities to lawfully set up an  
6 effective guarantee structure. And we are, of course, open  
7 to any suggestions from Mr. Zhang."

8 Q. In connection with this e-mail or other  
9 communications that you had, did you discuss other  
10 possibilities with the Troutman Sanders firm of how to  
11 structure a deal in China using your monies?

12 A. I don't understand the question.

13 Q. Sure. During your discussions with the Troutman  
14 Sanders firm, did you have a dialogue regarding the possible  
15 vehicles to invest in China?

16 A. Yes.

17 Q. Okay. In addition to this e-mail, did you have  
18 other communications with either Mr. Wang or Mr. Epstein  
19 regarding those possible vehicles?

20 A. Yes, we did.

21 Q. Okay. And what was the form of those  
22 communications? For example, in writing, verbally, or  
23 otherwise?

24 A. Much -- a lot of it in -- verbally.

25 Q. And those verbal communications, were they by

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1 telephone or in person? What was the actual form of those  
2 conversations?

3 **A. By telephone and in person.**

4 THE COURT: Mr. Krinsky, in a general way, I will  
5 note that your questions have included many components of  
6 potential answers. It will help me more if the questions are  
7 more open-ended, in the nature of what happened next, what  
8 did you do, things like that. It -- it -- it simply will  
9 give me a better record upon which to assess the -- the facts  
10 and also the witness' credibility.

11 But your questions are unobjected to, and of  
12 course, I'm not objecting. I'm just offering some general  
13 guidance. Please continue.

14 And -- and I will say in a general way that  
15 applies to any attorney questioning any witness on direct.

16 BY MR. KRINSKY: (Cont'g.)

17 Q. In November 2008, take us through, if you would,  
18 the discussions you had generally with the Troutman Sanders  
19 firm regarding the investment in the China project.

20 **A. There were -- in general, there -- there was this**  
21 **China project where company structures needed to be set up.**  
22 **The company structure needed to be set up in a way that would**  
23 **work within the realities of our existing financing as well**  
24 **as any additional financing -- or additional funds as well as**  
25 **any additional financing that we would have to raise one way**

1 or another.

2 One had an effect on the other, so that was a continuous  
3 conversation of what funds we have, the timing of the funds,  
4 where the funds are coming from so as to be able to build or  
5 set up the company structure in a way that would fit those  
6 realities.

7 In addition to that, there were potential different  
8 avenues or different vehicles through which we would be able  
9 to potentially raise funds, and they -- those -- all of those  
10 would have to fit into the same eventual corporate structure.  
11 All of that had to fit in within the China legal system,  
12 which has, I guess, a whole bunch of restrictions that have  
13 to be taken into account. All that had to be worked in  
14 within the -- the letter of intent that was basically the  
15 framework of something the -- the real estate developer would  
16 have to agree with and which would work within the realities  
17 of what existed on my side.

18 Q. When you say into the realities of what existed on  
19 your side, what specifically are you referring to?

20 A. Funding. A significant portion of the funding,  
21 roughly thirty percent of it, as we -- as I calculated at  
22 that time, would have come from my investment in Caring. And  
23 -- and there was an issue of getting the money out as well as  
24 the timing of getting that issue resolved. And that was an  
25 important and significant part in this investment. Without

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1 that, this whole potential China deal -- it -- it's a  
2 possibility we wouldn't be able to pull it off.

3 Q. In connection with the Troutman Sanders firm  
4 representing you, what, if any, discussions did you have with  
5 the Troutman Sanders firm regarding specific investment  
6 vehicles?

7 A. I discussed with them -- my Flexocraft was an  
8 investment vehicle as well as my funds in Caring that we  
9 needed to get out of Caring into a -- somehow into an  
10 intermediate vehicle in order for us to -- so I should be  
11 able to leverage those funds and be able to get money or a  
12 loan based on what I -- the -- based on the equity that I  
13 would leverage into this intermediary company, which was --  
14 we tried to use G.R.V.

15 Q. Now specifically, without telling us what you said  
16 and what they said to you, what were the general categories  
17 of information that you provided to Troutman Sanders and  
18 Troutman Sanders asked you for with respect to Caring?

19 A. The general information was in reference to my  
20 ownership rights, the issues that I was having of why I can't  
21 seem to just take the money out, the delay -- delay in -- in  
22 licensing, which was part of the issue or the issue actually,  
23 my profits, my investments in the company, and even the -- to  
24 the point of -- of how the money would accrue or accrues and  
25 how it would get to a particular two point two million or

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1     **something at a particular point in time.**

2           Q.     You mentioned a moment ago G.R.V. During this  
3     period of time that you were discussing Caring, the China --  
4     and the China project with the Troutman Firm, what was the  
5     value of the company G.R.V.?

6           A.     **G.R.V. had no value.**

7           Q.     Mr. Klein, help us to understand. If G.R.V. had  
8     no value, how could G.R.V. be used as an investment vehicle  
9     to invest in China?

10          A.     **Without the factoring agreement, it wouldn't be**  
11     **able to.**

12          Q.     And the factoring agreement that you're referring  
13     to specifically relates to what company and what ownership  
14     interests?

15          A.     **The factoring agreement relates to my ownership**  
16     **interest in Caring at that time.**

17          Q.     During what period of time were you engaged --  
18     withdrawn.

19                 You mentioned a moment ago that you were engaged  
20     in negotiations over a factoring agreement. During what  
21     period of time did those negotiations take place?

22          A.     **From the summer of '08 until about January '09, I**  
23     **think. End of January '09, I believe.**

24          Q.     That had to do with the factoring agreement. Now  
25     during what period of time was Troutman Sanders actively

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1 pursuing your interests in connection with the China project  
2 that you referred to?

3 A. The same timeframe, from summer '08 until end of  
4 December.

5 Q. To your knowledge, did Ms. Persaud know about the  
6 China project that you were negotiating or working on during  
7 this period of time?

8 A. Yes, she did. I told her about it.

9 Q. What did you say to her generally, and what did  
10 she say to you generally?

11 A. In general, it was about negotiating with her in  
12 reference to the factoring agreement that I wanted her to  
13 sign and therefore be able to leverage my equity in Caring in  
14 order to be able to use it for the China project. I  
15 basically told her that I am looking to get a loan on a line  
16 of credit based on my equity in Caring. And therefore, I  
17 would need to make a factoring agreement in order to be able  
18 do that.

19 Q. Were the discussions that you had with Ms. Persaud  
20 regarding your ownership interest in Caring to be used for  
21 China? Is that the same information that you provided to  
22 Troutman Sanders during confidential communications?

23 A. Pretty much the same.

24 MR. STREMB: Objection, Your Honor. I -- I can't

25 --.

1 THE COURT: Sustained. You can restate that  
2 question. It contains a number of conclusions. I think if  
3 you break it down, it will be more helpful.

4 MR. KRINSKY: Your Honor, may I have a moment to  
5 confer with co-counsel?

6 THE COURT: Surely. If you're unable to restate the  
7 question, I'll -- I'll give you an opportunity to respond.  
8 It seemed to me a situation best addressed by a restated  
9 question.

10 BY MR. KRINSKY: (Cont'g.)

11 Q. You testified earlier regarding confidential  
12 information that you provided to the Troutman Sanders firm.  
13 Do you recall those questions?

14 A. Yes.

15 Q. Mr. Klein, as you sit here today, why is it that  
16 you don't want the Troutman Sanders firm representing the  
17 Trustee?

18 A. During the Troutman Sanders representation and me  
19 working with them, I gave them a lot of information -- a lot  
20 of confidential information in relation to my dealings, my  
21 finance, my thinking, essentially giving them a roadmap to  
22 everything about my finances specifically related to Caring.  
23 If they would be allowed to represent the Trustee, they would  
24 be able to use that information to help the Trustee try to  
25 take away my rights or ownership rights in Caring. I don't



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1 think that's right.

2 MR. KRINSKY: I have no further questions.

3 THE COURT: Thank you. You may -- you may inquire.

4 RECROSS EXAMINATION

5 BY MR. STREMBBA:

6 Q. Mr. Klein, did you ever provide to Troutman  
7 Sanders a personal balance sheet?

8 A. No.

9 Q. Did you ever provide Troutman Sanders with a  
10 personal income statement or other financial statement?

11 A. No.

12 Q. Did you ever provide Troutman Sanders with any  
13 personal tax returns?

14 A. No.

15 Q. Did you ever provide Troutman Sanders with any  
16 personal bank statements, brokerage statements, or credit  
17 card statements?

18 A. No.

19 Q. Did you ever provide Troutman Sanders with any  
20 balance sheet for Caring Home Care Agency?

21 A. No.

22 Q. Did you ever provide Troutman Sanders with any  
23 income statements or other financial statements of Caring?

24 A. No.

25 Q. Any tax returns of Caring?

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1           **A.     No.**

2           Q.     Any bank statements, brokerage statements, credit  
3     card statements of Caring?

4           **A.     No.**

5           Q.     Any accounting records of Caring?

6           **A.     No.**

7           Q.     Any contracts to which Caring was a party?

8           **A.     No.**

9           Q.     Did you provide Troutman with any list of  
10    transfers that was -- that were made by Caring to any other  
11    party?

12          **A.     No.**

13          Q.     Did you provide any documentation of any transfers  
14    made by Caring to any other party?

15          **A.     No.**

16          Q.     Did you provide Troutman Sanders with copies of  
17    any proposed contracts between Caring and any other party?

18          **A.     No.**

19          Q.     Specifically, did you provide Troutman Sanders  
20    with a copy of any proposed factoring agreement with Caring?

21          **A.     I don't believe so.**

22          Q.     Did you provide Troutman Sanders with any  
23    documentation of the ownership of Caring?

24          **A.     No.**

25          Q.     Did you provide Troutman Sanders with any balance

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1 sheet for Trade Fame Group, Limited?

2 A. No.

3 Q. Did you provide any income statement or other  
4 financial statements of Trade Fame Group?

5 A. No.

6 Q. Any tax returns of Trade Fame Group?

7 A. No.

8 Q. Any bank statements, brokerage statements, credit  
9 card statements?

10 A. No.

11 Q. Any accounting records?

12 A. No.

13 Q. Any contracts to which Trade Fame Group was a  
14 party?

15 A. No.

16 Q. Any list of transfers made by Trade Frame -- Trade  
17 Fame Group to any other party?

18 A. No.

19 Q. Documentation of any transfers made to Trade Fame  
20 Group by any other party?

21 A. No.

22 Q. Any proposed contracts between Trade Fame Group  
23 and any other party?

24 A. Documentation?

25 Q. Yes.

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1           **A.     No.**

2           Q.     Mr. Klein, did you ever ask Troutman Sanders to  
3     assist you in obtaining financing for the China Project?

4           **A.     Yes.**

5           Q.     And what did you ask them to do?

6           **A.     We -- we explained to them our financial position,**  
7     **and they offered that they do financing-related venture**  
8     **capital, raising funds, and that they might be able to help**  
9     **us in that regard.**

10           MR. STREMB: I move to strike the answer. Mr.  
11     Klein, what did you ask Troutman Sanders to do in connection  
12     with obtaining financing?

13           THE COURT: Wait. There's -- there's -- there's no  
14     jury. I'm going to -- I'm going to let the answer stand.  
15     You can -- you can follow up.

16     BY MR. STREMB: (Cont'g.)

17           Q.     Specifically, Mr. Klein, what services did you ask  
18     Troutman Sanders to render in connection with obtaining  
19     financing for the China Project?

20           **A.     They actually offered us that they would be able**  
21     **to --.**

22           Q.     Mr. Klein?

23           **A.     Yes?**

24           Q.     What did you ask Troutman Sanders to do?

25           **A.     Based on our existing financing, if they would be**

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1    **able to raise capital in order to potentially fill in the**  
2    **gap, if there would be, in fact, a gap.**

3           Q.     Did you ask Troutman Sanders to review any draft  
4    contracts between Caring and any other party?

5           A.     **No.**

6           Q.     Did you ask Troutman to communicate on your behalf  
7    with -- with anyone with respect -- I'm sorry -- with anyone  
8    on behalf of Caring?

9           A.     **No.**

10          Q.     You indicated that you were having discussions  
11    during the summer and into -- through December with Caring  
12    with regard to a possible factoring agreement, correct?

13          A.     **Correct.**

14          Q.     With whom were you communicating with regard to --  
15    to the possible factoring agreement?

16          A.     **On my side --**

17          Q.     Yeah.

18          A.     **-- or with Troutman's side?**

19          Q.     No, not with Troutman. Who -- with whom on behalf  
20    of Caring were you communicating?

21          A.     **Christine Persaud.**

22          Q.     Were you also having communications with an  
23    attorney representing Caring?

24          A.     **Yes.**

25          Q.     And who was that?

1           **A.     Sam Reif (phonetic spelling).**

2           Q.    And did you ask Troutman to speak to Mr. Reif on  
3    your behalf with respect to a factoring agreement?

4           **A.     No.**

5           Q.    Were you represented by any counsel in connection  
6    with your proposed factoring agreement?

7           **A.     The factoring agreement was drafted by counsel,**  
8    **yes.**

9           Q.    And which counsel was that?

10          **A.     Paul Salazar (phonetic spelling), among others.**

11          Q.    Among what -- which other --?

12          **A.     There was multiple drafts. We had to make sure**  
13    **that a factoring agreement would work within the D.O.H.**  
14    **regulations.**

15          Q.    So what attorneys other than Mr. Salazar  
16    participated in that drafting?

17          **A.     I think it was Tenzer (phonetic spelling).**

18          Q.    The Tenzer Firm?

19          **A.     Yeah.**

20          Q.    Any -- any others?

21          **A.     I don't remember.**

22          Q.    Mr. Klein, to your knowledge, has there ever been  
23    an e-mail communication between you and your brother on one  
24    hand and Troutman on the other that refers to Caring?

25          **A.     I don't think so.**

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1 Q. Are you aware of any e-mail communication between  
2 you and your brother on one hand and Troutman on the other  
3 hand that refers to Trade Fame Group?

4 A. No.

5 Q. Are you aware of any e-mail communication between  
6 you or your brother and Troutman that refers to any contract  
7 or proposed contract between Caring and any other parties?

8 A. No.

9 Q. Are you aware of any e-mail communication between  
10 you or your brother and Troutman that refers to any transfer  
11 made by Caring to Trade Fame Group?

12 A. No.

13 Q. Are you aware of any e-mail communication between  
14 you or your brother and Troutman that refers to Christine  
15 Persaud?

16 A. I don't think so.

17 Q. Mr. Klein, I'd like to direct your attention to  
18 Troutman Exhibit A, which is a copy of the engagement letter.  
19 It's in the binder that -- that I provided. You can -- you  
20 can look at it either now or as I ask questions. I just have  
21 a few questions about it. First, is there any reference in  
22 the engagement letter to Caring?

23 A. No.

24 Q. Is there any reference in the engagement letter to  
25 Trade Fame Group?

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1           **A.     No.**

2           Q.     Is there any reference to any contract or proposed  
3 contract between Caring and any other party?

4           **A.     No.**

5           Q.     Is there any reference to Christine Persaud in the  
6 engagement letter?

7           **A.     No.**

8           Q.     Is there any reference in that engagement letter  
9 to providing services relating to obtaining financing for the  
10 China Project?

11          **A.     No.**

12          Q.     Did you -- to your knowledge, did you or your  
13 brother ever ask Troutman Sanders to add something to its  
14 engagement letter that would cover potential financings for  
15 the China project?

16          **A.     I don't believe so.**

17          Q.     Mr. Klein, I'm going to refer you to an affidavit  
18 that you submitted in connection with your objection. It's  
19 Trustee Exhibit O in the binder. First, Mr. Klein, could you  
20 confirm that you signed this affidavit on the -- the last  
21 page?

22          **A.     Yeah, it's my signature.**

23          Q.     Mr. Klein, I'd like to refer you now to paragraph  
24 thirty-eight of your affidavit. I don't think the pages are  
25 numbered, but it is paragraph thirty-eight. This paragraph



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1 reads, quote, "It is clear that my expectation was that the  
2 Troutman firm continued to represent us in the ongoing matter  
3 of the China project, and that, if anything, as of December  
4 2008, the China Project was picking up momentum as evidenced  
5 by the Troutman firm's very words and actions that the  
6 Troutman firm believed that it was important at that precise  
7 point in time, December 2008, to have the retention agreement  
8 executed."

9 Now Mr. Klein, as you sit here today under oath, do  
10 you believe that the China project was picking up momentum as  
11 of the end of December 2008?

12 MR. KRINSKY: Objection. Form. Improper  
13 impeachment. There's been no inconsistency, and the witness  
14 hasn't said he doesn't remember.

15 MR. STREMB: I'm asking him --.

16 THE COURT: Overruled. It's cross examination.  
17 This is the witness's statement under affirmation. I think  
18 it's an appropriate question. You had a wide berth on  
19 direct.

20 MR. KRINSKY: Is the document in --?

21 THE COURT: I think a wide berth is appropriate.

22 MR. KRINSKY: Is the document in evidence?

23 THE COURT: I don't think --.

24 MR. STREMB: It isn't now, but if you'd like it to  
25 be, it can be.

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1 THE COURT: It -- it is an affidavit that you filed  
2 in the case. Do you object to its use?

3 MR. KRINSKY: No. In fact, I would offer -- I would  
4 then ask that it be offered into evidence and therefore it be  
5 a part of the record --

6 THE COURT: Okay.

7 MR. KRINSKY: -- as opposed to simply a pleading.

8 MR. STREMBBA: Your Honor, that's fine with me.  
9 We'll move the -- the -- it's --.

10 THE COURT: It's admitted without objection. It  
11 will be admitted.

12 (Trustee Exhibit O is admitted in evidence.)

13 **A. Yes, it was picking up momentum.**

14 BY MR. STREMBBA: (Cont'g.)

15 Q. And how can you say that it was picking up  
16 momentum at the end of December 2008?

17 **A. Until we were told that the developers were**  
18 **putting it on hold for a while due to the economic turmoil**  
19 **worldwide, it was picking up momentum.**

20 Q. The developer indicated that he was putting the  
21 project on hold on December 31, 2008, isn't that correct?

22 **A. Correct.**

23 Q. And so as of the end of December 2008, in your  
24 view, was the project picking up momentum?

25 **A. Until we were told that it wasn't.**

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1 Q. But as of December 31, 2008, it was no longer  
2 picking up momentum is that your testimony now?

3 A. As of December 31 when the Troutman Sanders firm  
4 told us that the developer had put it on hold, that's when we  
5 were notified that it was no longer picking up momentum.  
6 That is correct.

7 Q. So in your affidavit in paragraph thirty-eight  
8 when you say that the project was picking up momentum, you're  
9 referring to the period before December 31, 2008?

10 A. It was the end of December, correct.

11 Q. And not to the period since?

12 A. Not since that time, correct.

13 Q. Has the China project ever proceeded?

14 A. No.

15 Q. Mr. Klein, I'd like to refer you next to an  
16 affidavit -- another affidavit that you submitted in this  
17 matter. It's Trustee Exhibit N in the binder. This is an  
18 affidavit dated August 15, 2011. I'd like you to look at the  
19 last page and confirm, if you can, that you signed this  
20 affidavit.

21 A. Yes.

22 MR. STREMB: I'd like to move this exhibit into  
23 evidence, Your Honor.

24 THE COURT: Any objection?

25 MR. KRINSKY: No objection.

1 THE COURT: Without objection, it will be  
2 received.

3 (Trustee Exhibit N is admitted in evidence.)

4 BY MR. STREMB: (Cont'g.)

5 Q. Mr. Klein, please look at paragraph seven of your  
6 affidavit, which reads, quote, "While the actual work on the  
7 China project has been temporarily suspended because of the  
8 economic downturn, et cetera, the representation by Troutman  
9 Sanders, L.L.P., is still ongoing." Mr. Klein, as you sit  
10 here today under oath, would you say that the China project  
11 has been temporarily suspended?

12 A. I would still say so, yes.

13 Q. How many years would it take you to say that the  
14 project was no longer temporarily suspended?

15 MR. KRINSKY: Objection. Argumentative.

16 THE COURT: Overruled.

17 A. The project still exists. The economy didn't turn  
18 much around. And would the right time come for the project  
19 to be a viable project, it would still exist.

20 BY MR. STREMB: (Cont'g.)

21 Q. Mr. Klein, since December 2008, have you made any  
22 attempt to keep up with developments regarding the Chinese  
23 economy?

24 A. Just as much as it pertains to me and my general  
25 business.

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1 Q. Okay. And how do you keep up with the Chinese  
2 economy?

3 A. Just from the information that I get in general  
4 business, which I do with China on a daily basis.

5 Q. Would that include regularly reading any  
6 newspapers like the Wall Street Journal?

7 A. No.

8 Q. Do you regularly read the New York Times business  
9 section?

10 A. No.

11 Q. Have you -- strike that. Withdrawn.

12 What is your general understanding of how the  
13 Chinese economy has been faring since December 2008?

14 A. From the information that I have, I guess it had  
15 ups and downs, but better than the U.S. economy to a degree.  
16 That's the best of -- of my information.

17 Q. Is anybody -- withdrawn.

18 Have you ever read or heard reports that the  
19 Chinese economy has been in a boom state during the last few  
20 years?

21 A. I can't say that I did.

22 Q. Have you ever read or heard reports that real  
23 estate prices have risen so much in the last few years that  
24 there is a potential real estate bubble in China?

25 A. In certain areas, I did hear about that, yes.

1 Q. Do you believe that there is still a temporary --  
2 strike -- withdrawn.

3 Do you believe that there is still an economic  
4 downturn in China?

5 A. There is definitely an economic downturn  
6 worldwide. And this is really why this project was put on  
7 hold as of uncertainty because it had a certain window of  
8 sell through. And if that window of sell through wouldn't --  
9 wouldn't be met, that would mean additional investment in  
10 that project. And therefore, from the developer's  
11 perspective -- and I wasn't making the decisions -- from the  
12 developer's perspective, he felt that it's a risk of this  
13 project going out of that twenty-four month or so window.

14 Q. Well, that twenty-four month window is now past,  
15 right?

16 A. No, it's a twenty-four month window from when this  
17 -- the project actually starts until it's completed.

18 Q. So during the last three years, have you looked at  
19 any other potential investments in China?

20 MR. KRINSKY: Objection. Relevance.

21 THE COURT: Well, you've -- it seems to me in your  
22 examination you've asked a number of questions that go to  
23 the bigger picture of Mr. Klein's investment interests. I  
24 don't think a long inquiry on this is likely to be  
25 productive, but I'm going to overrule the objection for now.

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1 I think the door's been opened. You may inquire.

2 **A. Can you repeat the question again, please?**

3 BY MR. STREMB: (Cont'g.)

4 Q. During the last three years, have you considered  
5 investing in any other project in China?

6 **A. No real estate projects, no.**

7 Q. Has the developer of the China project done --  
8 proceeded with the project to any extent?

9 **A. Not with that project.**

10 Q. I'd like to direct your attention now to paragraph  
11 eleven C of the same affidavit. This paragraph states,  
12 quote, "As my interests in China intersected with my  
13 interests in Caring Home Care in the attempt to arrange for  
14 financing, and Christine Persaud raised certain allegations,  
15 which I deny, it is reasonable to assume that there is a  
16 possibility that Troutman Sanders, L.L.P., will, on behalf of  
17 the Chapter 7 Trustee, investigate and/or litigate matters,  
18 the very same matters for which I have retained them to  
19 represent me."

20 Mr. Klein, in that paragraph where you refer to  
21 the attempt to arrange for financing, are you referring to  
22 the proposed factoring agreement that you testified to  
23 earlier?

24 **A. All right. It's in reference to all the**  
25 **information that I gave to Troutman Sanders' firm in**

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1 reference to my interests in Caring and my financing in  
2 Caring and the -- and my -- interests and ownership rights  
3 and everything that I told them about it.

4 Q. And the reference to the certain allegations made  
5 by Christine Persaud, what allegations are you referring to  
6 there?

7 A. She made a whole bunch of allegations.

8 Q. Which ones are you referring to here, "certain  
9 allegations"? Are you referring to the allegation that there  
10 were improper transfers made between Caring and Trade Fame  
11 Group?

12 A. That could be one of them.

13 Q. What other ones could there be?

14 A. Any and all allegations that she would have made.

15 Q. Are you saying you don't remember any others?

16 A. I can't recall in detail all of them, no.

17 Q. Did you refer to any other allegations in your  
18 affidavit or in the other affidavit that we looked at?

19 A. I wouldn't recall. I can read it.

20 THE COURT: It would be helpful to you to take a  
21 moment to read your affidavit. You should do so.

22 A. (Cont'g.) I've read it. What was the question  
23 again?

24 BY MR. STREMB: (Cont'g.)

25 Q. Well, the question is, when you referred to



1 certain allegations in paragraph eleven C of your affidavit,  
2 weren't you referring to the allegation that there were  
3 improper transfers made by Caring to Trade Fame Group  
4 Limited?

5 **A. I guess that would be one of the allegations -- or**  
6 **in this -- in --.**

7 **Q.** And what were the other allegations that you were  
8 referring to? Withdrawn.

9 Let me refer you back to paragraph nine of your --  
10 of the same affidavit, Exhibit N, in which you refer to an  
11 affidavit of Christine Persaud. In that paragraph, you refer  
12 to allegations that Ms. Persaud made. Is there any  
13 allegation referred to there, other than improper transfers  
14 made by Caring to Trade Fame Group?

15 **A. No.**

16 **Q.** And looking up at paragraph eight where you  
17 reference your approach to Christine Persaud to obtain an  
18 agreement, quote, "to allow me to attempt to secure favorable  
19 financing," end quote. Is that the agreement that you were  
20 referring to in paragraph eleven C when you talk about the  
21 attempt to arrange for financing?

22 **A. Yes.**

23 **Q.** Now Mr. Klein, you've testified that you did not  
24 engage Troutman Sanders to represent you in connection with  
25 the factoring agreement, and you've testified that you did

1 not engage Troutman Sanders with respect to any transfers  
2 between Caring and Trade Frame Group -- Fame Group. I ask  
3 you, therefore, as you sit here today under oath, how you can  
4 reconcile that with your statement that these are the very  
5 same matters for which I have retained them to represent me?

6 A. I retained Troutman Sanders for my China project.  
7 In conjunction with the China project, I have disclosed to  
8 Troutman Sanders all this information relating to Caring Home  
9 Care, my financing Caring Home Care, the need to transfer  
10 funds out of Caring Home Care, and different ways of how --  
11 creative ways of how I was thinking of getting it done. All  
12 that was in relation to the China project, and that is  
13 exactly what I -- that is what I hired the Troutman Sanders  
14 for -- firm -- was for the China Project, and which I  
15 disclosed all that information to them.

16 MR. STREMB: Your Honor, may -- may I just take two  
17 minutes to look at my --

18 THE COURT: Yes, you may.

19 MR. STREMB: -- my notes? Your Honor, no more  
20 questions.

21 THE COURT: All right. Redirect?

22 MR. KRINSKY: Yes, Your Honor.

23 THE COURT: Proceed. Please proceed. I understand  
24 some of the other attorneys may be attending at some point.  
25 I'm just trying to be sure we know -- have the most current

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1 information. Please proceed.

2 REDIRECT EXAMINATION

3 BY MR. KRINSKY:

4 Q. Opposing counsel asked you a number of questions  
5 regarding documents and whether or not you turned over  
6 certain documents to the Troutman Sanders firm in connection  
7 with certain business entities. Do you remember those  
8 questions?

9 A. Yes.

10 Q. When, if at all, did you turn over stock  
11 certificates for G.R.V. to the Troutman Sanders firm?

12 A. Never did.

13 Q. When, if at all, did you turn over tax returns for  
14 G.R.V. to the Troutman Sanders firm?

15 A. I didn't.

16 Q. When, if at all, did you turn over accounting  
17 documents relating to G.R.V. to the Troutman Sanders firm?

18 A. I didn't.

19 Q. When, if at all, did you turn over profit and loss  
20 statements of G.R.V. to the Troutman Sanders firm?

21 A. I didn't.

22 Q. When, if at all, did you turn over cash flow  
23 statements relating to G.R.V. to the Troutman Sanders firm?

24 A. I didn't.

25 Q. When, if at all, did you turn over ownership

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1 certificates or documents relating to G.R.V. to the Troutman  
2 Sanders firm?

3 A. I didn't.

4 Q. When, if at all, did you turn over balance sheets  
5 or income statements regarding G.R.V. to the Troutman Sanders  
6 firm?

7 A. I didn't.

8 Q. Referring your attention specifically to the tab  
9 that is marked Exhibit Eight or Eight in your binder. In the  
10 large binder, please.

11 A. Okay.

12 MR. KRINSKY: May I ask you to turn -- I'm going  
13 to ask you to turn to that tab and then please look up.

14 THE COURT: I'm sorry. Which tab?

15 MR. KRINSKY: Tab number eight.

16 THE COURT: Eight.

17 BY MR. KRINSKY: (Cont'g.)

18 Q. Mr. Klein, do you recognize that document?

19 A. Yes, I do.

20 Q. How do you recognize that document?

21 A. I recognize that from my e-mail.

22 Q. Okay. And what is that document?

23 A. That's the document that gives the outline of the  
24 China real estate project development.

25 Q. And you said that was -- I think you said that was

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1 your e-mail?

2 **A. No, I recognize it from my e-mail.**

3 MR. KRINSKY: Okay. I offer into evidence what  
4 was previously marked as Klein Exhibit Eight for  
5 identification as Klein Exhibit Eight.

6 MR. STREMB: No objection, Your Honor.

7 THE COURT: Without objection, the document marked  
8 as Exhibit Eight, which appears to be a one page e-mail  
9 followed by a page labeled Attachment One, followed by a page  
10 unaccompanied by translations, a several page document in  
11 Chinese, and concluding with a spreadsheet in English. Is  
12 this the document?

13 MR. KRINSKY: It is, Your Honor.

14 THE COURT: In order to -- any sense of this  
15 document, of course, I'll need to have a certified  
16 translation of the portion in Chinese.

17 MR. KRINSKY: Of course. And -- and Your Honor, to  
18 the extent that we're not going to be referring to that  
19 document, I can -- for the Court's ease and for moving this  
20 along, I can offer to remove that portion of the Chinese  
21 document because we're not going to be referring it. So  
22 rather than avoid expense and time and effort in going  
23 through having that translation, with Your Honor's  
24 permission, I would offer to re-offer this document simply  
25 referring to or including within it the first page of the e-

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1 mail and the last page, which is the Excel spreadsheet.

2 THE COURT: The document begins, "Please see  
3 attached docs." The document is directed to an individual  
4 you've indicated in your argument and in your affirmation  
5 plays a significant role.

6 MR. KRINSKY: Very well.

7 THE COURT: I'm concerned that accepting an  
8 incomplete document may be a problem. At the same time, I'm  
9 going to rely on the adversary process. If there's no  
10 objection to receiving what I'll call Exhibit Eight --.

11 MR. STREMB: Your Honor, I object to receiving --.

12 THE COURT: -- Eight A as an incomplete document, we  
13 can receive the document.

14 MR. KRINSKY: Your Honor, if -- if that's the case,  
15 then if Your Honor will keep open the record, I will have a  
16 certified -- I will have a certified translation provided to  
17 the Court.

18 THE COURT: For the moment, I'm going to take the  
19 proffer as an -- as the document before me. I cannot admit  
20 that which is not before me. So any objection to receiving  
21 the document within the framework described?

22 MR. STREMB: No, Your Honor, as a complete document  
23 now.

24 THE COURT: Document is admitted as reflected in the  
25 record.

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1 (Klein Exhibit Eight is admitted in evidence.)

2 THE COURT: An incomplete document including a  
3 several-page attachment in Chinese. Thank you. Please  
4 proceed.

5 BY MR. KRINSKY: (Cont'g.)

6 Q. We're referring specifically to the last page of  
7 the document, which appears to be an Excel spreadsheet.

8 Mr. Klein, does this Excel spreadsheet indicate  
9 what your role was going to be in the China project in terms  
10 of investing?

11 A. I -- I was going to be a forty-percent partner in  
12 the joint venture.

13 Q. Where specifically -- please identify for the  
14 record specifically where in this document it indicates that  
15 you'd be a forty-percent investor?

16 A. Somewhere down in the middle of the document, like  
17 the third group of cells.

18 Q. Okay. You're referring to the center of the page,  
19 third box from the top?

20 A. Correct.

21 Q. Okay. And specifically, what does that say?  
22 Because again, you have the document; we need the record to  
23 accurately reflect what you're referring to.

24 A. It explains the split on the joint venture, sixty  
25 percent Zhang (phonetic spelling), forty percent Klein, joint

1 venture. And then further, it breaks down of how the  
2 approximate money investment from Zhang and Klein as sixty  
3 percent/forty percent, as well as the income on the  
4 investment as sixty percent Zhang and forty percent Klein.

5 Q. Mr. Klein, did you ever have subsequent  
6 conversations with the Troutman Sanders firm regarding your  
7 forty percent investment in the China project?

8 A. Yes.

9 MR. KRINSKY: Specifically, did you have discussions  
10 with the Troutman firm regarding where that forty percent  
11 interest would come from?

12 MR. STREMB: Your Honor, this has been asked and  
13 answered about ten times.

14 MR. KRINSKY: I ask for a small amount of latitude,  
15 and I think, Your Honor, very quickly, I'm going to get to  
16 where I'm going right now.

17 THE COURT: You may proceed.

18 MR. KRINSKY: At the point in time that this  
19 spreadsheet was sent to the Troutman Sanders firm --

20 THE COURT: May I -- may I pose a clarifying  
21 question? Did you send this e-mail?

22 THE WITNESS: This e-mail was sent by my brother.

23 THE COURT: You may continue.

24 BY MR. KRINSKY: (Cont'g.)

25 Q. Rephrase. At the point in time that this document



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1 was sent by Herschel (phonetic spelling) Klein, was Herschel  
2 Klein -- in what capacity was Herschel Klein sending the  
3 document?

4 **A. He was acting on my behalf.**

5 Q. And at the point in time that this document was  
6 transmitted to the Troutman Sanders firm, were there any  
7 discussions at this point in time regarding G.R.V.?

8 **A. No.**

9 Q. So let's talk then about your specific investment  
10 of forty percent -- your specific investment of forty  
11 percent. At the time that this document was transmitted to  
12 Troutman Sanders, or thereafter, did you ever provide your  
13 individual tax returns to Troutman Sanders?

14 **A. No.**

15 Q. Did you ever provide your individual profit and  
16 loss statements for your --

17 **A. No.**

18 Q. -- own individual income to Troutman Sanders?

19 **A. No.**

20 Q. Did you ever provide a personal cash flow statement  
21 to Troutman Sanders for your own individual finances?

22 **A. No.**

23 Q. Did you ever provide any sort of balance sheet for  
24 your personal finances to Troutman Sanders?

25 **A. No.**

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1 Q. Did you ever provide any personal income statements  
2 to Troutman Sanders?

3 A. No.

4 Q. There were certain -- there were certain questions  
5 asked of you with respect to the ongoing nature of the China  
6 project. To your knowledge, after January of '09 -- to your  
7 knowledge, were there any restrictions placed on the real  
8 estate market going forward with respect to investments?

9 A. Yeah, there was a change. There was a -- there was  
10 a change in the China law to a degree of -- before that time,  
11 people -- a lot of the real estate was built for inventory.  
12 People just bought it, flipped it, and that's really what was  
13 driving a lot of the prices up. And due to some, I guess,  
14 market overheating and the government trying to take some  
15 precautions of -- for it not to overheat, they changed the  
16 laws whereby somebody buying real estate -- they would have  
17 to hold onto it for a certain period of time whereby it would  
18 become -- the attraction of buying just to flip became less  
19 --.

20 Q. Going back for a moment, Mr. Stremba asked you a  
21 series of questions regarding what, if any, advice you  
22 received from the Troutman Sanders firm regarding the  
23 financing of this deal. Do you recall those questions?

24 A. Yes.

25 MR. STREMB: That's not what I asked, Your Honor.

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1 MR. KRINSKY: He --.

2 COURTROOM DEPUTY: You have to talk closer to the  
3 mic.

4 THE COURT: And it's a good idea to stand up. It  
5 helps me see who's here, and that is the practice here.

6 MR. STREMBE: Your Honor, the questions and answers  
7 concern what Mr. Klein asked Troutman Sanders to do. This is  
8 going beyond the scope of all of the examination.

9 THE COURT: You know, this is redirect, generally  
10 confined to the scope of the cross, to the extent that it's  
11 appropriate to bring up a new document, for example. I'm --  
12 I'm giving you some leeway there, but I remind you that it is  
13 not necessary to repeat questions that were put to the  
14 witness in cross --

15 MR. KRINSKY: Right.

16 THE COURT: -- as I think perhaps maybe you did in  
17 your last series of questions. Though the record will speak  
18 for itself, and there was no objection, I also note for the  
19 record that the record will speak for itself as to what the  
20 questions and answers were. We don't yet have the benefit of  
21 the transcript. We shall have one shortly. In all events, I  
22 -- I urge you to be as productive as possible. We are -- I  
23 am -- I am determined to finish this testimony this morning  
24 and can give this another fifty minutes or so, but that is  
25 the timeframe I have in mind.

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1 Mr. Klein, it is my greatest -- in -- in presiding  
2 over this hearing this morning, one of my many goals is that  
3 you shall be able to complete your testimony. I'm sure  
4 that's in the lawyers' interests as well as yours and even  
5 the Court's to have this testimony be concluded today.

6 Please, you may continue.

7 BY MR. KRINSKY: (Cont'g.)

8 Q. Mr. Stremba asked you certain questions regarding  
9 certain allegations made by Ms. Persaud against you. Do you  
10 recall those questions?

11 A. Yes.

12 Q. Mr. Klein, are you aware that Ms. Persaud says that  
13 her dispute with you began when you approached her in October  
14 of 2008 for a seven million dollar line of credit through  
15 Caring Home Caring to finance expansion of a business you  
16 said you were operating in China?

17 A. Yes, I'm aware.

18 Q. With respect to those allegations and those  
19 statements, what specifically, to your knowledge, was Ms.  
20 Persaud referring to when she said the dispute arose  
21 regarding a line of credit through Care -- Caring Home Care  
22 with respect to the expansion of a China business?

23 A. She was talking about the factoring agreement and  
24 the project in China -- the real estate development project  
25 in China.

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1 Q. Is this the same financing structure vehicle that  
2 you spoke with and confided with in the Troutman Sanders  
3 firm?

4 MR. STREMB: Objection, Your Honor. It's a leading  
5 question.

6 MR. KRINSKY: Your Honor, may I respond?

7 THE COURT: Yes, you may.

8 MR. KRINSKY: Technically, it's not -- a leading  
9 question would be "isn't it true" where it actually  
10 presupposes the answer built into it. If it's a yes or no  
11 question, that wouldn't make it leading in and of itself.

12 MR. STREMB: This one is, Your Honor.

13 MR. KRINSKY: I can rephrase, Your Honor.

14 THE COURT: I'm -- I'm going to -- perhaps you can  
15 rephrase it in a general way. I will not sustain the  
16 objection, although you are going to rephrase the question,  
17 and that may address some of the concerns. I'll remind all  
18 of the parties, as I have from time to time, that substance  
19 contained in a lawyer's question is much less helpful to the  
20 Court as finder of fact than substance contained in a  
21 witness' answer. And so when a series of questions elicits  
22 answers in the nature of yes or yes or no or no when we are  
23 on direct of any witness, it is simply less helpful and --  
24 and -- and may well be less persuasive to me as finder of  
25 fact.

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1 But it's -- I'll -- I'll -- you know, I'll do my  
2 best to rule on the objections as they come up. To the  
3 extent that there's a way to move this forward in the most  
4 productive way, I may offer guidance from time to time, but  
5 it is absolutely the lawyer's job and not mine to decide how  
6 this record is presented to the Court. All right. You can -  
7 -

8 MR. KRINSKY: Mr. Klein --

9 THE COURT: -- restate or revise the question as you  
10 see fit.

11 MR. KRINSKY: Sure.

12 THE COURT: I've overruled the objection.

13 BY MR. KRINSKY: (Cont'g.)

14 Q. Mr. Klein, with respect to Ms. Persaud's  
15 allegations against you, how, if at all, are those  
16 allegations related to the legal advice that you were  
17 receiving from Troutman Sanders in connection with the China  
18 project?

19 A. The -- the allegations that Christine Persaud is  
20 making is in reference to the precise information that I  
21 provided to Troutman Sanders in relation to financing of the  
22 China project. That's -- in order to structure the China  
23 deal, that was important information that they needed to know  
24 -- whether we would be able to pull this thing off when --  
25 and if we would, how it would happen.

1           So that was a lot of confidential information that they  
2   got, and that is directly related to the issue of Caring and  
3   what Christine is accusing me of.

4           MR. KRINSKY: And the --.

5                               EXAMINATION

6   BY THE COURT:

7           Q. Mr. Klein, you've just indicated that the  
8   information you have in mind is the, quote -- or this is more  
9   or less a quote. My notes may be inaccurate. The record  
10   will speak for itself. Is the precise information that I  
11   provided in -- to Troutman Sanders in connection with the  
12   China project. Now you've been shown a number of documents,  
13   and your counsel has presented over one hundred and twenty  
14   exhibits. I'd like you to indicate to me any document that  
15   you've been shown, and you may take the time you need, that  
16   includes the precise information, your phrase, that you  
17   provided to Troutman Sanders in connection with the China  
18   project that was of this financial and confidential nature.  
19   Are you aware of any documents, including printouts of e-  
20   mails -- so I'm including electronic documents -- that set  
21   forth such information?

22                   If you're not, that's fine. If you are, I'd like  
23   you to tell me with specificity where they are.

24           A. A lot of information was on -- done verbally on  
25   phone calls.

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1 Q. So no documents that you can describe or point to  
2 presently -- and I note that there is before you, it's a  
3 binder, approximately six inches thick, of the one hundred  
4 and twenty-plus exhibits that have been identified in this  
5 hearing over many -- over many weeks now by your counsel.  
6 Any documents? That was my question. I'll next give you an  
7 opportunity to indicate with respect to verbal, but let's  
8 stay on documents for the moment.

9 A. It's not in the documents.

10 Q. All right. You can't identify a single document in  
11 which what you've described as the precise information was  
12 provided.

13 Let's turn to the verbal communications that you've  
14 just referenced. Can you tell me when the first one was?

15 A. In July.

16 Q. Who was involved?

17 A. Aurora Cassirer and Edward Epstein.

18 Q. And yourself?

19 A. And myself.

20 Q. Was it --?

21 A. And Herschel.

22 Q. Was it on the telephone?

23 A. Yes.

24 Q. Are you certain?

25 A. Yeah.



1 Q. Do you recall it or do you reconstruct it to be  
2 then?

3 A. I believe it was then, I recall.

4 Q. What did you say?

5 A. The question was --.

6 Q. Okay. Let me rephrase that. What was the precise  
7 information of a financial nature that you provided to  
8 Troutman Sanders in connection with the China project?

9 A. The information was of my holdings or my money in  
10 Caring and the raising of -- of funds through Flexocraft.

11 Q. I'm looking for the precise information. Was that  
12 as precise as it was, what you just said?

13 A. The exact words?

14 Q. The information. You had --.

15 A. The information was in --.

16 Q. You've described two topics, it seems to me. I'm  
17 looking for the precise information that you provided to  
18 Troutman Sanders in connection with the China project.

19 A. The information was in relation to my money at  
20 Caring, my partnership rights in Caring, and what it would  
21 take -- or the possibilities of what it would take to get the  
22 money out of Caring.

23 Q. What did you say with respect to your money at  
24 Caring?

25 A. That I haven't -- how much money I invested in

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1     **there, approximately how much --.**

2           Q.    Do you remember what you said?

3           **A.    Not word for word.**

4           Q.    Do you remember what you said? Not the subject,  
5   but the -- and you can answer this question yes or no, and  
6   we'll consider whether it's -- whether we can go beyond that,  
7   but I -- I -- do you recall what you said in this  
8   conversation. And I -- let me step back. When in July?

9           **A.    July 30 -- July 30th, I believe, or July 31st.**

10          Q.    Do you recall that it was on July 30th, or are you  
11   speculating or reconstruction that it was on July 30t?

12          **A.    It was on -- a phone call on July 30th.**

13                THE COURT: All right. Tell me everything you  
14   recall about that phone call.

15                MR. KRINSKY: Your Honor, I'm going to object at  
16   this point. Other than the general information, if you are  
17   going to ask the witness about specific information that was  
18   revealed, then I ask, as law of the Second Circuit and this  
19   court requires, that it be done in camera ex parte.

20                THE COURT: I'm not going to take testimony --.

21                MR. KRINSKY: Otherwise, it defeats the very  
22   purpose. He cannot --.

23                THE COURT: All right. Well, I'll -- I will -- I --  
24   your counsel has asked me no longer to inquire. I shall  
25   decline the -- I -- I shall stop at this point. Your answers

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1 have been helpful to me, and I thank you for them.

2 You may proceed. Do you have any further questions  
3 on redirect?

4 MR. KRINSKY: I have no further questions.

5 THE COURT: Recross, please.

6 MR. STREMBBA: Just -- just about two questions, Your  
7 -- Your Honor.

8 RECROSS EXAMINATION

9 BY MR. STREMBBA:

10 Q. On this spreadsheet that -- that you were looking  
11 at in the exhibit that was just -- just marked, Exhibit  
12 Eight, in the box that you were looking at, there's an  
13 indication, I think, that the investment that would be  
14 required by you would be approximately five point eight  
15 million dollars, is that correct?

16 A. Correct.

17 Q. Is there any indication on this sheet as to where  
18 those funds would be acquired?

19 A. No.

20 MR. STREMBBA: Thank you. I have no more, Your  
21 Honor.

22 THE COURT: All right. Mr. Klein, I -- any further  
23 -- any further questions from any counsel? Would you like a  
24 moment to confer with your colleagues? I'll give you that  
25 moment. We are complete through the recross, so it may well

1 be that there should be no further questions. But if you  
2 wish to make an application further to inquire, I'll hear  
3 you.

4 MR. KRINSKY: No, Your Honor.

5 THE COURT: All right. Thank you. Mr. Klein, I  
6 believe that your -- your examination is complete. I thank  
7 you for your time and your patience. And in particular, with  
8 the number of days it's taken us to make this record and also  
9 with the questions of counsel and the Court.

10 All right. We're going to take a very short recess,  
11 and we'll be back in just a moment. We have a little -- we  
12 have -- we're going to aim to complete this proceeding by  
13 eleven thirty. I'll be back in about five minutes. And as  
14 the parties are aware, I've entered some additional orders  
15 granted on Thursday in response to an application for an  
16 order to show cause, and I will let you know whether I think  
17 there's anything further we need to take up today when I  
18 return. Thank you so much.

19 COURTROOM DEPUTY: All rise.

20 COURT OFFICER: All rise.

21 THE COURT: Thank you. Be seated.

22 COURT OFFICER: Second call in all Christine Persaud  
23 matters.

24 THE COURT: All right. How many more witnesses  
25 does -- do the objectors have?

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1 MR. KRINSKY: Bruce Green (phonetic spelling), and  
2 that's it, Your Honor.

3 THE COURT: Okay, and when is Mr. Green --  
4 Professor Green, anticipated to -- well, let's talk about  
5 scheduling, briefly. How much time do we anticipate for  
6 Professor Green's testimony?

7 MR. KRINSKY: Your Honor, in terms of direct, I  
8 think I need probably less than an hour. Though certainly, if  
9 the Court and opposing counsel are okay, we would rest on his  
10 affidavit itself as direct, and subject -- and then subject him  
11 to cross, but we'll work -- whatever the Court thinks is best  
12 and easiest.

13 THE COURT: I think we can begin with cross -- it  
14 would be acceptable to me to accept the direct testimony in  
15 affidavit form and then take -- and then begin with cross  
16 examination.

17 SEC MAN: Your Honor, in the first instance --.

18 THE COURT: Oh, and this is expert testimony, is  
19 that right? That would be only if the parties can agree and  
20 stipulate to his qualification and proffer as an expert.

21 MR. KRINSKY: Of course.

22 THE COURT: All right?

23 SEC MAN: Your Honor --.

24 THE COURT: Do you have that agreement yet?

25 SEC MAN: Your Honor, the qualifications are not

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1 the issue. We can stipulate that he's qualified. My objection  
2 is to the admission of expert testimony of the nature  
3 proffered.

4 THE COURT: Okay, so it sounds like we will need to  
5 -- to make a record on that and I'll need to determine that.  
6 I'm looking at an opportunity -- I'll say unexpected, it arises  
7 from a cancellation of another matter, or a rescheduling of  
8 another matter, on the afternoon of November 22nd at about two  
9 o'clock? Something like that?

10 THIRD MAN: Your Honor?

11 THE COURT: It comes after a full morning of  
12 hearings. We'll do our best to be able to start at two. Is  
13 that a convenient time for the parties and for Professor Green?

14 MR. KRINSKY: Your Honor, unfortunately --.

15 THE COURT: If it doesn't work for the witness, it  
16 doesn't work.

17 MR. KRINSKY: Your Honor, the challenge I face,  
18 beginning November 21st, I'm on trial for approximately, I --  
19 seven days to ten days.

20 THE COURT: All right, I'm looking at a table full  
21 of counsel, and able counsel each and all of them is. If your  
22 presence is necessary, we'll work around that trial schedule.  
23 Do you think that the prospect of that trial proceeding is  
24 highly likely?

25 MR. KRINSKY: We're being called out on the 21st.

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1 It's been on the calendar three months now. We're being called  
2 out on the 21st to actually go to a judge. It is not --.

3 THE COURT: State court, I take it?

4 MR. KRINSKY: State court, correct. It is possible  
5 that we may not get straight days, but I'm hesitant because I  
6 won't know until the morning of the 21st -- I'll know the  
7 morning of the 21st the schedule for the next two weeks,  
8 essentially, but I won't know until the 21st.

9 SECOND MAN: Your Honor, I -- I have a - a calendar  
10 issue as well, the week of the 21st. Not -- not quite as -- as  
11 extensive it sounds like Mr. Krinsky's, but I have a trial  
12 commencing in Central Islip at nine-thirty on Monday, the 21st,  
13 and --

14 THE COURT: So let's look for a different --.

15 SECOND MAN: -- and I'm not sure if -- it could  
16 very well be over in a day, Your Honor, but I'm not -- I'm not  
17 positive.

18 THE COURT: Those are too many uncertainties on  
19 each side of the aisle. Let's look for a different day.

20 SECOND MAN: But -- on -- however -- on Mr. Green's  
21 issue?

22 THE COURT: Yes?

23 SECOND MAN: I'm sorry -- on the issue of Mr.  
24 Green, I don't need to be here if it's only going to be Mr.  
25 Green. Mr. Stremba could do it, so even if I couldn't make it

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1 in the afternoon, it wouldn't matter.

2 THE COURT: Any other -- any other witnesses?

3 MR. KRINSKY: That's all we anticipate.

4 THE COURT: So -- so you're not able to commit at  
5 this point to proceed on the 22nd. Let's look at the week of  
6 the 28th. It looks like midday on Monday the 28th may be  
7 possible. I'm giving you all my open time, but it's not --.

8 MR. KRINSKY: I believe, Your Honor, that -- that  
9 would work. At least it gives me advance notice to be able to  
10 say to the state court judge that there's another matter, and  
11 I'm sure they'll work around me once I -- I sort of give them  
12 at least a couple day notice.

13 THE COURT: Okay.

14 SEC MAN: Would midday mean two o'clock?

15 THE COURT: Well, let's say a little earlier than  
16 that, because I have a -- a class to teach at four o'clock, but  
17 Ms. Jackson, what would you like? Would you like the morning  
18 or afternoon? Let's say nine o'clock. We'll actually do it in  
19 the morning. Okay?

20 MAN: Nine a.m.?

21 THE COURT: Nine o'clock on the 28th.

22 MAN: Mr. Zilberberg has indicated that although he  
23 will be overseas, I will proceed if it's just going to be  
24 Professor Green, that I will proceed on my own that day without  
25 Mr. Zilberberg's presence.



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1 THE COURT: Okay. So we'll -- an -- any witnesses  
2 beyond that?

3 MR. KRINSKY: No, Your Honor.

4 THE COURT: Okay. Do you anticipate -- I know it's  
5 -- you don't need to tell me yet, you don't need to know if you  
6 have a rebuttal case planned, but if you are aware of any  
7 rebuttal case you'll be putting in following the objectors,  
8 it'll help me plan to know that.

9 THIRD MAN: We haven't planned any, Your Honor.

10 THE COURT: Okay. All right. If that changes, you  
11 should contact Mr. Krinsky and also the Court.

12 THIRD MAN: Yes, Your Honor.

13 SEC MAN: We will, Your Honor.

14 THE COURT: So let's see if we can do our best to  
15 complete this record on the morning of the 28th with testimony  
16 of Professor Green to the extent that you may stipulate -- and  
17 I say that with -- with an open mind to whatever issues you  
18 raise as whether we need the testimony, but I can also say that  
19 in the context where there is no jury, but only the Court, and  
20 as you say, it appears that there would not be a dispute as to  
21 the objective qualifications of -- of the witness to be an  
22 expert, it may be that the most efficient thing to do from the  
23 standpoint of the trustee's administration of this Chapter 7  
24 case, the presentation of the case by the objectors and -- and  
25 the Court's time is simply to take testimony for what it's

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1 worth, and your arguments can go to the -- to the weight, to  
2 the persuasiveness, perhaps, those of course will all be  
3 preserved. All right. So what we'll see, we'll see on the  
4 morning of the 28th --.

5 FOURTH MAN: Your Honor? Just one other quick  
6 matter. Mr. Krinsky filed papers last week, a -- a -- a -- I  
7 guess it was a reply in connection with their motion to compel  
8 production of documents. As we understood it, there wouldn't  
9 be any further papers filed unless Troutman Sanders first saw  
10 the need to supplement the record, but papers have been filed.

11 THE COURT: I'm -- is -- could you indicate which  
12 number on the docket? There were quite a number of things  
13 filed, there were -- there --.

14 FIFTH MAN: Your Honor, it's document -- I'm sorry,  
15 Your Honor. I apologize for the frog in my throat. It's  
16 document number 287. It was filed on 11/8.

17 THE COURT: Is this the order to show --?

18 FIFTH MAN: No, this is the --

19 THE COURT: -- or, excuse me, application for the  
20 entry of an order to show?

21 FIFTH MAN: No, Your Honor. This is -- this is --  
22 the document is entitled, attorney reply affirmation.

23 THE COURT: All right, well, we'll be sure --.

24 FIFTH MAN: And it's a writ -- it's an affirmation  
25 of Mr. Krinsky.

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1 THE COURT: Would you like an opportunity to  
2 respond?

3 MAN: If -- if Your Honor is going to entertain the  
4 -- the matter, then we would like an opportunity --

5 THE COURT: How much --.

6 MAN: -- either on paper or when we come back on  
7 the --

8 FIFTH MAN: -- on the -- on the 28th.

9 THE COURT: I'll give you -- I'll give you time to  
10 put in papers in response. It's helpful to the Court to have  
11 papers. If you think there are things that need to be said, in  
12 order for me to give them the attention they deserve, it's --  
13 I'll leave it to you. But you can file something any time this  
14 week.

15 FIFTH MAN: And Your Honor, if we were to -- just  
16 -- if it's okay, Your Honor, since this is a bad week, could we  
17 -- could we put that -- anything we were going to put in in  
18 reply, could we have until next week?

19 THE COURT: I'm going to ask you to work out a  
20 schedule, and submit it in -- in the proposed stipulation to  
21 the Court. Because that -- you're -- you should not be  
22 required to describe all of the different matters you're  
23 managing around on the record. This is something I -- I -- I'm  
24 sure that good lawyers can work out between each other and  
25 submit it to the Court.

1 MR. KRINSKY: Whatever additional time they need,  
2 Your Honor. We have no -- we have no objections.

3 THE COURT: All right. You can work that out. And  
4 submit something so everyone knows what to expect. I -- I'll  
5 -- I expect that I will so order any reasonable schedule that  
6 the parties submit. There's the question of the 2004 issues  
7 that have been raised again by -- on behalf of the entities --  
8 the entity and individuals as to whom such orders were entered.  
9 I read with care the papers that were submitted and it seemed  
10 to me appropriate, based on the suggestion that the 2004 orders  
11 -- very limited 2004 orders that I entered seemed to require a  
12 certain kind of production, that it was not my intention to  
13 require issued orders that clarify and correct and -- amend,  
14 perhaps correct, those orders. They do conform them to what I  
15 intended. And to the extent that the earlier versions were not  
16 as clear as they should be. I apologize to the parties. In  
17 view of the ambiguity, though not raised until last week, it  
18 did seem also appropriate to me to extend the time from today,  
19 which was the initial date for first -- for the commencement of  
20 production of documents, to -- until later this week, and I  
21 think I put it out to Thursday or Friday, is that right? So, I  
22 will -- understanding that we only have a few minutes, we do  
23 have all these matters on the calendar. I remain satisfied that  
24 based on the entire record, there is a basis for at least some  
25 preliminary documentary inquiry, and I've tried to provide a --

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1 a limited, and now clarified template as to what should be  
2 produced, and to the extent that there is a need to go beyond,  
3 as there well may be, this very initial production of  
4 documents. And to the extent that the parties -- that the  
5 trustee may seek oral exam -- oral examination, as opposed to  
6 just examination via the production of documents -- you know,  
7 all those matters remain before me. I will hear, very briefly,  
8 anything further in response to the clarified orders that were  
9 entered, but I must emphasize that we really only have a few  
10 minutes for this. I gave a lot of care to the matter at first,  
11 I've heard extensive argument on it. I have reconsidered all  
12 of those issues in the context of the applications that were  
13 filed and entered further and clarifying orders, amended  
14 orders, that provide -- that this really is quite limited  
15 initial production, indeed, and seeks, for example, as to the  
16 Escobar order, documents related to loans or business  
17 arrangements between, on the one hand, Mr. Kline and his  
18 related entities, and on the other hand, the debtor and any  
19 related entities. It may well be that these individuals have  
20 no such documents, in which case, it cannot be produced what  
21 does not exist. But I think it's a logical first step. It's  
22 difficult to imagine circumstances where such production would  
23 not be supported by the record and the very, very broad scope  
24 that is the scope of Rule 2004. And, you know -- hindsight, I  
25 proceeded with the opportunity to clarify as I did, and in the

1 absence of a response, which I would typically very much seek.  
2 If I enter an order that can be improved, and I see that myself  
3 I'll do it, if it's brought to my attention by parties. I'm  
4 not -- I'll -- I'll be as responsive as I can be under the  
5 circumstances. I want to add, I guess, finally, that I -- I do  
6 not view this as simply the latest front in the long-running  
7 battle between these parties, nor do I expect counsel to treat  
8 it as such. You may proceed. I emphasize (unintelligible).

9 MR. LEWITTIS: Good morning, Your Honor. Joel  
10 Lewittis of counsel to Mr. Zilberberg. Listening to the last  
11 few minutes of Your Honor's statements, I feel rather bad that  
12 apparently what I set forth in my order to show cause and  
13 motion, did not properly communicate itself to the Court.

14 THE COURT: The papers were very helpful. I  
15 studied them with care, and I thank you for them. They led to  
16 the entry of amended orders, so there's nothing whatsoever  
17 about which to be sorry. I thank you for your input, as I  
18 indicated. When I can improve an order, especially in a  
19 complicated document production description context, I am keen  
20 to do so.

21 MR. LEWITTIS: I thank you for the additional four  
22 days which was granted in order to produce the documents, I  
23 believe on Friday rather than today.

24 THE COURT: To be clear, to commence the production  
25 of documents.

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1 MR. LEWITTIS: But, to me, that does not really  
2 focus upon my motion for reconsideration. Now, you and I know  
3 that technically, in the federal courts, there is nothing like  
4 a motion for reconsideration, but we look to, and we were  
5 inspired by federal rules civil procedure, Rule 59 to alter or  
6 amend judgments on the grounds that a -- an important matter of  
7 law has been overlooked clear error, and manifest error. The  
8 first question that any federal judge must confront is, do I  
9 have subject matter jurisdiction? Because if we look at 28  
10 USC, 1334 (E1), the district court and via the automatic  
11 reference of this court, exclusive jurisdiction is given to the  
12 Court over property of the debtor at the time of the filing of  
13 the petition. We have set forth and the Court will permit,  
14 give me a few minutes, to set forth orally, why this Court does  
15 not have a jurisdiction to hear this matter the applications  
16 with respect to 2004, because we submit that we have made at  
17 least -- at least a prima facie showing that the debtors --  
18 there's no property interest and therefore the trustee and the  
19 estate have no property interest in order to pursue a 2004.  
20 And we say that unless and until this court, adjudicates that  
21 issue as to whether or not this estate has any interest,  
22 whether legal or equitable, we cannot and we should not, and I  
23 think the law does not permit us to go farther. There are  
24 several ground rules we have to deal with, and that is, if in  
25 fact we can demonstrate, and I believe we can, that the



1 debtor's estate has no property interest in Caring. Then it  
2 doesn't matter whether the Court cites to, as it did, in its  
3 autogranting in part 2004 examinations. Doesn't matter,  
4 because I don't disagree that bankruptcy code section 704  
5 (a)(4) directs the trustee to investigate the financial affairs  
6 of the debtor. What that is based upon a shown fact that the  
7 estate has some property interest.

8 THE COURT: Isn't that argument a bit circular?  
9 How could a trustee make that showing, in the absence of some  
10 kind of showing, or some kind of opportunity to gather the  
11 relevant information? Now isn't that precisely what 2004 is  
12 intended to do, and in so many cases does? I see many  
13 situations where trustees seek relief under 2004, and conclude  
14 there is, in fact, no interest, or no interest worth pursuing,  
15 in the trustee's business judgment. But it seems to me that  
16 your argument asks me to assume away the process that the  
17 trustee is required by fiduciary duty, including on behalf of  
18 this creditor to pursue.

19 MR. LEWITTIS: He has no fiduciary duty if there's  
20 no interest here. And it is not circular.

21 THE COURT: Not to you, but perhaps to me.

22 MR. LEWITTIS: Well, I -- I'm here not to spend too  
23 much time, but I am here to try -- try and convince you --.

24 THE COURT: You have been overwhelmingly successful  
25 in your opposition to this application. I have entered the



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1 most minimal relief in response.

2 MR. LEWITTIS: It doesn't --.

3 THE COURT: Carefully circumscribed in order to  
4 minimize the burdens on the parties.

5 MR. LEWITTIS: To me --.

6 THE COURT: Though I -- though I should say again,  
7 and I -- I -- I credit your arguments to this extent. You have  
8 persuaded me that the most modest steps, the smallest steps, or  
9 the small steps reflected, perhaps they could be even smaller,  
10 but the small steps reflected were the appropriate steps at  
11 this time without prejudice to what further relief I might  
12 enter.

13 MR. LEWITTIS: If not -- I'm not mistaken, I  
14 believe that we cited a bank -- an eastern district case, which  
15 says, in essence that, if there is property interest, there can  
16 be no 2004. And the answer is not that you have to find out  
17 the property interest. The determination has to be made first.  
18 This is not the kind of case which I had indicated the last  
19 time I had the opportunity to approach this lectern. This is  
20 not a run-of-the-mill, garden variety type of case, which of  
21 course we know, certain powers are granted to the trustee --.

22 THE COURT: I need to clarify something about my  
23 approach to these things for your benefit. I do not view any  
24 one of the cases before me, or that has ever been before me as  
25 either run-of-the-mill or garden variety.

1 MR. LEWITTIS: What -- this -- what I was saying  
2 was not meant --.

3 THE COURT: Not this one, not any other.

4 MR. LEWITTIS: Not meant to be personal, Your  
5 Honor.

6 THE COURT: I do not take it personally. I think  
7 it is important clarification. Your argument, I take it, is  
8 that this is not a run-of-the-mill, garden variety case. My  
9 response to you is, no case is a run-of-the-mill or garden  
10 variety case in my view. And I -- and I --.

11 MR. LEWITTIS: In that case --.

12 THE COURT: -- trustees in counsel to bring that  
13 professionalism to their efforts.

14 MR. LEWITTIS: I will with -- I'll withdraw that.

15 THE COURT: That might -- I think that would be  
16 helpful. There's not one special set of code and rules for the  
17 Christine Persaud/Abraham Klein dispute.

18 MR. LEWITTIS: Correct.

19 THE COURT: Thank you.

20 MR. LEWITTIS: And that is why I'm here.

21 THE COURT: Yes?

22 MR. LEWITTIS: Because I don't want to have a  
23 special code of rules. What I am asking for is a code of rules  
24 that complies --.

25 THE COURT: Code or rules, I said.

1 MR. LEWITTIS: -- the subject matter jurisdiction  
2 of this court, and I'm not bringing in the cart before the  
3 horse. The fact of the matter is, that is the one question  
4 this court has to deal with. Now, it's -- it's a very simple  
5 issue, if the Court is willing to grapple with it. We have  
6 helped, I believe the Court, in reaching that decision, by  
7 pointing to several matters. Number one is the award by the  
8 arbitrator which sets forth with particularity the fact that  
9 these two parties, Persaud and Klein, could not get together,  
10 that it was the finding of the arbitrator that, although  
11 originally Mr. Klein had a fifty percent interest, the Court  
12 found that in the event and when a transfer of the permits and  
13 what-have-you would be forthcoming, then Mr. Klein would have a  
14 hundred percent interest. The trustee often takes the  
15 position, he reads the word fifty percent and says, ah-ha. But  
16 that was a prelude to the final conclusion that once certain  
17 things had done -- that is, transfer of the licenses, et  
18 cetera, in conformity with the regulations and rules of the  
19 Department of Health of the State of New York, then Mr. Klein  
20 gets the hundred percent of the ownership. And the finale ends  
21 with the following. It is further ordered that if Persaud  
22 works at, and for the benefit of Caring, during the pendency of  
23 the license transfer, for and at offices of Caring, for a  
24 minimum of thirty hours per week, she will be entitled to  
25 compensation of a thousand dollars per week, and no more for

1 any reason until the provisions of this award are fully  
2 complied with, and thereafter she has no residual interest or  
3 rights in Caring. If Ms. Persaud has no residual interest or  
4 rights in Caring, must we not inquire as to what rights or  
5 interests the Trustee's estate has?

6 THE COURT: And isn't an appropriate way to do that  
7 to provide with the clarification that was needed, as I learned  
8 from the papers, that to the extent that, for example, any of  
9 these parties has information showing --.

10 MR. LEWITTIS: Right.

11 THE COURT: Speak with precision -- let me get my  
12 order in front of me, one of the orders -- that anything  
13 concerning a loan or business arrangement between Mr. Klein on  
14 the one hand and the debtor on the other.

15 MR. LEWITTIS: My --.

16 THE COURT: That's something that makes sense to  
17 produce? I -- if there is such a document, it seems to me that  
18 it is within a sensible scope, narrowly construed, of a 2004  
19 examination. If there is not, then there's nothing to produce.

20 MR. LEWITTIS: Your Honor --.

21 THE COURT: And I -- I -- I -- strikes me to say --

22 MR. LEWITTIS: Your Honor, I have a --.

23 THE COURT: -- as an interesting -- as a sensible  
24 measured -- in the first step, and the opportunity to  
25 reconsider that determination leaves me satisfied that it is --

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1 that it is that.

2 MR. LEWITTIS: Your Honor, the way it works in my  
3 understanding and view, is that once there is an objection to a  
4 2004, the burden then shifts to this Trustee to show great  
5 cause why he is entitled to the 2004. Your Honor has --.

6 THE COURT: His applications were first heard in  
7 September, the record is quite complete. Hearings on these  
8 applications, according to my docket, have been held on  
9 September 8th, 13th, 20th, 22nd, October 28th, and November  
10 8th, so the record is a full record and not only the record on  
11 reconsideration. And it is amplified by many proceedings that  
12 took place, and I say this with the greatest respect and  
13 deference, before you were involved and in which you've had no  
14 involvement. So there's an entire record before this court,  
15 including of the Chapter 11 proceeding, that informs the  
16 determinations that I've made. You -- you need to -- because  
17 of my obligations to -- because of other obligations, we will  
18 need to bring this to closure fairly soon.

19 MR. LEWITTIS: Your Honor, I -- I beg --.

20 THE COURT: I'm trying to be as deferential as I  
21 can to your desire to add to what you've said in your papers.  
22 There is no need to refute it, you can probably tell I studied  
23 your papers with great care.

24 MR. LEWITTIS: No -- the -- the only cause -- we  
25 have a -- we have the application of the trustee. The only

1 cause discernable, if one can call that cause, is a bald  
2 statement, a naked statement, that -- that the Trustee owns  
3 Caring. That is not fulfillment of the burden of showing  
4 cause. That is a conclusory statement that has absolutely no  
5 basis in fact. He doesn't even present any basis for saying  
6 that he has ownership. That is not cause shown. I without  
7 going into this matter -- we have that award. That award,  
8 whether it is confirmed or not, has been determined to be as a  
9 matter of law subject to the rules of collateral estoppel and  
10 Res Judicata. And we have cited a Second Circuit decision to  
11 that effect, which is Jacobson against Fireman's Fund. So I  
12 have that. He has a single statement that says he owns it. We  
13 can go beyond that. We have statements by former counsel of  
14 Ms. Persaud, admitting judicial admissions that she does not  
15 own Caring and/or Liberty. And the last week we were here, we  
16 had another submission that it, by Persaud, indicating that she  
17 doesn't own Caring or Liberty, it's a trust that owns --  
18 separate trust. So there is no cause shown, or can there be  
19 any cause shown, at this moment. And so I return to my initial  
20 statement, and that is, this court should determine first, not  
21 afterwards, because there's nothing for the trustee to check  
22 out. We have shown him this, and that, and his response is, I  
23 own Caring. This court, as a matter of subject matter  
24 jurisdiction in my view, this court must determine first who  
25 owns the property Caring? And once you get --.

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1 THE COURT: I would be uncomfortable with putting  
2 the trustee to that proof without permitting an inquiry,  
3 whether it happens in the context of the discovery tools in an  
4 adversary proceeding, or the tools available in the Chapter 7  
5 process. I -- I -- I think expecting the litigant to prove  
6 something without the ability to inquire as our system permits,  
7 through discovery of whatever type, would be a -- would be a  
8 mistake.

9 MR. LEWITTIS: Your Honor --.

10 THE COURT: It would be a mistake of law, it would  
11 be a mistake of case management, it would be a --.

12 MR. LEWITTIS: Your Honor, you did not hear me --

13 THE COURT: I -- I-- now, you may see that  
14 differently, I -- but --

15 MR. LEWITTIS: -- you didn't hear me use the word  
16 proof -- I didn't --

17 THE COURT: If -- if -- if it were your decision to  
18 make, I'm satisfied you would reach a decision consistent with  
19 the decision desired by the client who has retained you. That  
20 being said, I -- I -- I --

21 MR. LEWITTIS: You -- Your Honor, I did -- I never  
22 -- I never --

23 THE COURT: -- appreciate your position, I -- I --  
24 I already modified to great extent my orders in response to  
25 what you put in to clarify them.

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1 MR. LEWITTIS: With all due respect, I never said  
2 the trustee has to prove -- I never used the word prove. I  
3 said, how about a little good cause? That's something quite  
4 less than prove, and he hasn't done it.

5 THE COURT: Let -- let -- let's hear from the  
6 trustee. Thank you.

7 MR. PEREIRA: Your Honor, if I may.

8 THE COURT: Mr. Pereira, I need to remind you, as  
9 I've reminded counsel for the objector --

10 MR. PEREIRA: Good morning, Your Honor. John S.  
11 Pereira --.

12 THE COURT: -- that there are going to be some time  
13 constraints here.

14 MR. PEREIRA: I'm sorry, Your Honor. John S.  
15 Pereira, the Chapter 7 trustee. Mr. Lewittis talks about cause  
16 or -- and -- and connection. Your Honor, these are the facts,  
17 whether the -- Mr. Klein and his counsel, many counsel, want to  
18 hide them or not. Mr. Klein claims to be out two million  
19 dollars, based on a default judgment which he obtained. He  
20 went to arbitration. The arbitration that he went to, he  
21 obtained an arbitration award on default. The arbitration  
22 award itself starts with a very telling statement from the  
23 arbitrator, where it says, Mr. Klein was looking to the benefit  
24 of his bargain. He sued Mrs. Persaud to be a partner in  
25 Caring. He never -- it was never alleged that he owned fifty



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1 percent before the arbitration award. He alleged that he had  
2 -- he'd given and lent a lot of money to -- to Caring and  
3 evidently, was allegedly to Liberty, and as a result of the  
4 default arbitration award, because Ms. Persaud did not appear,  
5 the arbitrator somehow awarded him not fif -- there -- wound up  
6 saying that he owned part of Liberty -- not only Caring, but  
7 also Liberty. The award, there's no nexus. Let me see if I  
8 can give you a connection. In the arbitration award, Mr.  
9 Lewittis has no problem quoting the para -- the second  
10 paragraph. The first para -- one of the -- the paragraph above  
11 that which was quoted says, creditor Klein has a fifty percent  
12 ownership interest in both Caring and Liberty. There's a -- in  
13 accordance with the terms of the agreement, subject to the  
14 approvals of the agency with jurisdiction, which interest in  
15 Liberty shall cease. By the way, Liberty was never even a  
16 party to the arbitration, yet the arbitrator gave him fifty  
17 percent of Liberty. But that's another issue. Shall -- which  
18 -- at which interest in Liberty shall cease as soon as he or  
19 his designee is approved by the agencies with jurisdiction to  
20 be the sole operator of Caring. It doesn't say -- it says he's  
21 a -- in the same paragraph, it says he's a fifty percent owner  
22 of -- of Caring, and he's to be the sole operator of Caring.  
23 That does not mean that he owns a hundred percent of Caring.

24 THE COURT: Mr. Pereira, I'm looking for any  
25 insights you have on a practical response to this situation. I

1 remain concerned, deeply concerned, that the administration of  
2 this case is -- poses significant risk of being quite  
3 unproductive from a creditor's standpoint. I'm always  
4 concerned, as I'm sure any trustee is, when the great majority  
5 of the actions that the trustee proposes to take seem to be  
6 opposed by the primary creditor. Now, I'm further concerned  
7 when the bankruptcy court seems to be used as the next front in  
8 a litigation battle. It's unproductive in the bankruptcy  
9 process to use this process that way. So, I say, stepping  
10 back, looking at the bigger picture, I would like to hear from  
11 you, not only in the question of cause, and subject matter  
12 jurisdiction, which is a full-stop question that must command a  
13 court's full attention whenever it is raised and even when --  
14 if it is not, but also on the question of a practical approach  
15 here. I do see I have 2004 requests that have been pending  
16 before me for a long time --

17 MR. PEREIRA: Since August, Your Honor.

18 THE COURT: -- inconsistent with the need to move  
19 this case forward. And I will say that even upon a rethinking  
20 of all of the grounds and everything I had in mind in  
21 proceeding as I did, I remain satisfied that with clarification  
22 to be sure that my orders say what I wished them to say, as  
23 clearly as I can do that, that it is still a sensible way to  
24 proceed. But Mr. Pereira, you --

25 MR. PEREIRA: I -- I agree, Your Honor.

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1 THE COURT: -- pressed B here. I -- I -- I -- well,  
2 they were entered on Thurs -- Thursday?

3 MR. PEREIRA: I have not seen the order, but I  
4 agree that if we can proceed, even on the amended orders, it  
5 will be helpful. Your Honor, also, Mr. Klein and -- and  
6 counsel --

7 THE COURT: Hold on -- the -- the question was, I'm  
8 looking for views you may have as trustee in this case, on a  
9 practical approach to proceed here. And I need them very  
10 promptly because we do have a meeting downstairs of our bar and  
11 court that begins in approximately five minutes, as I  
12 previously advised the parties, we had intended on this hearing  
13 ending at eleven and we had to start late, there were  
14 circumstances quite beyond my control, but now we do only have  
15 a few minutes.

16 MR. PEREIRA: Your Honor, we have been through  
17 examinations of Ms. Persaud at the Section 341 meeting, and  
18 other conferences with her and her many counsel along the way.  
19 We have been told that Caring is probably ten times the size of  
20 Liberty, and that it is worth, according to published reports  
21 that have been in various local papers, and the testimony of  
22 Ms. Persaud, is worth between ten and thirty million dollars.  
23 We know that there are allegations that while Ms. Persaud owned  
24 Caring, and we believe she still owns Caring, by the virtue of  
25 what counsel doesn't tell you, which is that the appellate

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1 division has -- has reversed -- has vacated the judgment that  
2 confirmed the arbitration award.

3 THE COURT: But not reversed the arbitration award,  
4 Mr. Pereira?

5 MR. PEREIRA: But the arbitration award was  
6 obtained by default, Your Honor.

7 THE COURT: Does that make it any diff -- an order  
8 obtained from this court on default is still an order of this  
9 court.

10 MR. PEREIRA: By a private arbitrator, Your Honor.  
11 And --.

12 THE COURT: Pursuant to a valid arbitration clause?  
13 I realize that's before the state court, but -- Mr. Pereira, I  
14 -- I -- I urge you not to overstate your position.

15 MR. PEREIRA: I don't, I don't, Your Honor, if you  
16 -- the appellate division not only vacated the judgment, but  
17 took the extraordinary step of saying that a valid defense to  
18 the arbitration had been raised and ignored.

19 THE COURT: All right. Well, let me ask you this  
20 question. Do you think it makes sense to permit the parties to  
21 litigate to closure that issue in a state court where it is  
22 presently pending, and to defer all these proceedings until  
23 that is complete? I -- it seems to me that you're a true and  
24 first battlefront may be the state court, and I would be  
25 prepared to consider a joint request to proceed that way. It

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1 might significantly cut down on the costs of administration of  
2 this case. At the same time, in the absence of consent, I'm  
3 prepared to keep this case moving on a fast track here in the  
4 bankruptcy court. So --.

5 MR. PEREIRA: Your Honor, I -- fast track. A fast  
6 track, we will proceed --.

7 THE COURT: Right. Tell me the status of the state  
8 court proceedings? I need to know the status of the state  
9 court proceedings.

10 MR. PEREIRA: There -- I am not aware of the status  
11 of the state court proceedings.

12 THE COURT: I think you need to be aware of those  
13 proceedings, Mr. Pereira. Don't you?

14 MR. PEREIRA: Say again?

15 THE COURT: Don't you think you need to be aware of  
16 those proceedings?

17 MR. PEREIRA: I'm sorry, Your Honor, I --.

18 THE COURT: You need to know that. I'm surprised  
19 you don't. Would you like to confer with --?

20 MR. PEREIRA: No, Your -- Your Honor, the reason I  
21 don't know it is, there was a motion made before a -- by miss,  
22 again, one of Mr. Klein's motions to say that the -- to vacate  
23 this, the -- vacator of the confirmation of the judgement. He  
24 says that --.

25 THE COURT: Do they -- is that in appellate

1 division, or is that in the -- in New York Supreme?

2 MR. PEREIRA: It's appellate division rendered the  
3 decision. They took an appeal to the Court of Appeals. That  
4 appeal was not -- was -- court of appeals refused to hear the  
5 appeal.

6 THE COURT: Yes.

7 MR. PEREIRA: You have the appellate division is  
8 fine -- is a final judgement, vacating -- vacating the  
9 confirmation of the arbitration award.

10 THE COURT: When is the Court --?

11 MR. PEREIRA: They then made -- they, Mr. Klein,  
12 then made in this court another motion, a motion to have Your  
13 Honor declare that the appellate division judgement is null and  
14 void.

15 THE COURT: Mr. Pereira, I'm familiar with the  
16 record before me. My question is the record in the state  
17 court. Are you aware of what is presently pending in the state  
18 court?

19 MR. PEREIRA: To my knowledge, there are none --  
20 there is nothing scheduled in the state court.

21 THE COURT: The matter is -- the matter has been  
22 remanded to New York Supreme, isn't that correct?

23 MR. PEREIRA: Yes, I -- that's what the order said,  
24 Your Honor.

25 THE COURT: And what is now happening in response

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1 to that remand?

2 MR. PEREIRA: As far as I know, nothing has been  
3 done.

4 THE COURT: Would you like to confer with your  
5 counsel? With your -- with -- with the debtor's -- with the  
6 debtor's counsel? Who is standing up?

7 MAN: Judge, very quickly, it's -- it's waiting to  
8 see what happens in this court. Everything is stayed there,  
9 that has been remanded to Supreme --

10 THE COURT: Has there been --.

11 MAN: -- with the confirmation hearings and the  
12 arbitration award --.

13 THE COURT: All right. All right. Well, let's --  
14 all right. It's eleven fifty eight, we need to bring this to  
15 closure today. I'm going to note with respect to the adversary  
16 proceeding, the appearance of the plaintiff and defendant,  
17 we'll have an adjourn date. We have, of course, the continued  
18 hearing in the application to employ counsel. We have the  
19 applications for orders to show cause. To the extent that they  
20 seek reconsideration of the orders for reasons specified at  
21 very -- at various paragraphs and on grounds that they --  
22 orders as entered seek the production of documents that do not  
23 make sense in the context of the case. Am I not stating as  
24 nearly as effectively as was stated in the document, in the  
25 argument, for example, this seems to require, with respect to

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1 Joel Klein, Joel Klein to produce financial information  
2 regarding three different situations. Namely A, entities owned  
3 or controlled -- under control by Abraham Klein, B, entities  
4 owned or controlled by Abraham Klein and the debtor, and C,  
5 entities owned or controlled by the debtor. I trust that the  
6 orders as amended address that ambiguity to the extent the  
7 orders had that, and I let the orders speak -- the amended  
8 orders speak for themselves. But that issue, I think, has been  
9 addressed. So to that extent, the request for relief is  
10 responded to. Likewise, the concern or argument made in  
11 paragraph fourteen, reconsider why the subject of the  
12 application should be ordered to produce financial information  
13 of entities owned or controlled by Mr. Klein, despite the fact  
14 that these entities have no connection to the debtor. Not my  
15 intention, not, I believe what the order reflected, clearly not  
16 with the amended order reflect. So again, that issue's been  
17 addressed. Next paragraph, fifteen, there is a question  
18 concerning punctuation. I have reviewed with care the  
19 punctuation and I hope I have improved it. Thank you for the  
20 opportunity. With respect to the arguments set forth in the --  
21 the final paragraph of paragraph fifte -- sixteen, any concern  
22 about needing to proceed on November 14th, that being today, I  
23 took that to be indirectly a request for a little more time. I  
24 accommodated that request so each and all of those points has  
25 been responded to. There is separately a question as to



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1 subject matter jurisdiction. I do not see on careful initial  
2 reflection and further reflection, a subject matter  
3 jurisdiction presented here. But the cause of subject matter  
4 jurisdiction is so very important, I invite you to proceed with  
5 further briefing on that issue, and you can do that on an  
6 ordinary schedule. I do not think that it -- given the pace at  
7 which this matter is proceeding, it does not seem to me that  
8 order to show cause pace is required. If you'd like an  
9 expedited briefing schedule, you may negotiate it and submit it  
10 to the Court consensually. I take you are -- whatever you may  
11 disagree on, you've been able to work together on things like  
12 that. And so, the -- I'll say your application for the entry  
13 of an order to show cause has been granted in part as reflected  
14 in the orders previously entered and denied without prejudice  
15 in part as reflected in the record. That is to say, you may  
16 renew it as indicated. You deem it appropriate and  
17 concentrating on those issues that are so very important. I --  
18 I'll make a similar notation on each of these applications for  
19 order to show cause. I will remind the parties that that is a  
20 very special kind of tool and should be used absolutely  
21 whenever it's supported by the record and in compliance with  
22 our rules and procedures. I think that brings us to the 2004  
23 application (unintelligible) and we have would have been  
24 denominated as the reconsideration orders. I will make a  
25 similar entry there. I have reconsidered them. I --

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1 MR. LEWITTIS: Your Honor --

2 THE COURT: -- have already entered amended orders,  
3 and to the extent that I am not granting further relief you  
4 seek, you may work on a briefing schedule. Advise the Court by  
5 a submission and we'll take it from there. I am now  
6 constrained to bring this hearing to closure and because of the  
7 scheduling requirements that I've noted previously, all other  
8 matters on the Court's calendar will be carried to our next  
9 date, and that is again, Ms. Jackson --?

10 COURT OFFICER: The 28th at nine o'clock.

11 THE COURT: 28th at nine o'clock. I know you each  
12 and all have many further things to say. In order to  
13 accommodate each of you in fairness, I would have to  
14 accommodate all of you, and so I shall simply bring this to  
15 closure and wish you a good day. Thank you so much.

16 MR. LEWITTIS: I just wish -- Your Honor -- I have  
17 to know if --

18 THE COURT: We are concluded.

19 MR. LEWITTIS: -- about the discovery -- is it  
20 stayed now until we deal with subject matter jurisdiction?

21 THE COURT: I've indicated to you that you -- you  
22 may proceed as referenced in the record. The amended orders  
23 are on file. Thank you so much.

24 COURT OFFICER: All rise.

25 (The proceeding concluded.)

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1

CERTIFICATE

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4

I certify that the foregoing is a correct transcript  
from the electronic sound recording of the proceedings in the  
above-entitled matter.

5

Judith Spriggs

6

Judith Spriggs

15 November, 2011

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Transcriptionist

Date

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## United States Bankruptcy Court

Eastern District of New York  
271 Cadman Plaza East, Suite 1595  
Brooklyn, NY 11201-1800

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IN RE:

CASE NO: 1-10-44815-ess

Christine Persaud

SSN/TAX ID:

CHAPTER: 7

xxx-xx-0247

DEBTOR(s)

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